P.E.R.C. NO. 83-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF PHILLIPSBURG,

Petitioner,

-and- Docket No. SN-82-114

P.B.A. LOCAL 56,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds mandatorily negotiable a contract proposal requiring 24 hours notice of an individual shift change and a proposal requiring two weeks notice and prior explanation before a major change in departmental work schedules. The Commission holds not mandatorily negotiable a proposal which would require the employer to maintain a system of permanent shifts solely in accordance with seniority and regardless of employee qualifications.

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Appearances:
For the Petitioner, Herr & Fisher, Esqs.
(John H. Pursel, of Counsel)

For the Respondent, Loccke & Correia, Esqs.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On May 18, 1982, the Town of Phillipsburg ("Town") and P.B.A. Local 56 ("PBA") jointly filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The parties sought a declaration concerning the negotiability of the following contractual clauses:

Article II, Page 2 "Definitions"

Scheduled Duty Change: A change in the normal shift for which at least twenty-four (24) hours notice is provided to the EMPLOYEE prior to the start of his regular shift or the newly assigned shift, whichever gives the EMPLOYEE the greater amount of time.

Article V, Paragraph D

Effective January 1, 1979, the Town shall institute a system of permanent shifts in accordance with seniority similar to that which existed in the past with the understanding that four (4) swing men, as well as, Safe and Clean Neighborhoods Program support officers shall be excluded from the permanent shift provisions.

> It is further understood that new hires may, at the discretion of the Town, be placed in permanent shifts in accordance with seniority or as swing men.
>
> Article XXXI, Paragraph C
>
> Before any major change in the departmental work schedule is made, the Director, or other Employer designated representative, shall meet with and explain the change to the two (2) designated representatives of the PBA at least two weeks prior to the change.

Both parties have filed briefs and documents. The record reveals that these clauses were contained in a number of collective negotitions agreements with the PBA including one that has recently expired, that the PBA had initiated interest arbitration proceedings over a successor agreement, and that the PBA wishes the inclusion of these clauses in a successor agreement.[1/]

The Town contends that Irvington PBA v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) ("Irvington") bars negotiation over shifts and work schedules. It also contends that the clause on scheduled duty change is non-negotiable because it would require the Town to pay overtime to employees who did not receive at least 24 hours notice and would thus burden the Town's ability to respond to emergencies.

The PBA responds that the three clauses are mandatorily negotiable because they do not restrict management's right to determine manning levels, employee classifications, or the level

1/ The parties agreed that the interest arbitrator would not consider the clauses submitted to us for determination, but instead would issue his award and retain jurisdiction to amend it in the event the Commission found the clauses mandatorily negotiable. The interest arbitrator has since issued an award consistent with this understanding.

of service, but merely concern which employees will work at any particular time. It cites In re Local 195 and State of New Jersey, 88 N.J. 393 (1982) ("Local 195"); Borough of Roselle and Roselle Borough PBA Local No. 99, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Docket No. A-3329-79 (5/7/81) ("Roselle").

In Local 195, our Supreme Court summarized the tests for determining when a subject is mandatorily negotiable. It is if:

> ...(1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.
> Id. at pp. 404-405.

The initial clause in dispute concerns scheduled duty change. We believe that this clause intimately and directly affects the work and welfare of the Town's police officers. When an employee works is a matter of fundamental concern to the employee and his representative. See Local 195; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 7 (1973); Burlington County College Faculty Assoc. v. Board of Trustees, Burlington County College, 64 N.J. 10, 14 (1972); Roselle; In re Township of

Franklin, P.E.R.C. No. 83-38, 8 NJPER 576 (¶13266 1982); ("Franklin"); In re Township of Middletown, P.E.R.C. No. 82-90, 8 NJPER 237 (¶13095 1982), appeal pending App. Div. Docket No. A-3364-81T3 ("Middletown"). The proposal provides an employee with reasonable notice of a change in the hours of his employment so that he may adjust his plans accordingly. When read in conjunction with clauses concerning overtime, it may also provide him with additional compensation for the disruption in his personal plans caused by a change in working hours on short notice. Local 195 at p. 418; In re Township of Old Bridge Bd. of Ed., P.E.R.C. No. 83-60, 9 NJPER __ (¶_____ 1982) ("Old Bridge"). Accordingly, we conclude that Local 195's first test has been satisfied.

We now consider whether any statute or regulation preempts negotiation over this provision. The Town asserts that the clause is preempted by N.J.S.A. 40A:14-118, which enables municipalities to establish and regulate its police departments. As we held in Franklin, this is a general statute which does not preempt negotiation. The Township has not alleged that any other statutes or regulations preempt negotiations over the disputed provision, nor is the Commission aware of any similar statutes or regulations.

We must now consider whether negotiation over the clause concerning scheduled duty change would significantly interfere with governmental policy. We reject the Town's argument that the clause defining a "scheduled duty change" is not mandatorily negotiable because it might impede its ability to

make emergency assignments. We have held that such a clause cannot operate to impede such assignments. In re Borough of Pitman PBA Local 178, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981). The Town further protests that the clause may obligate the Town to pay overtime to employees who are required, on less than 24 hours notice, to work a different shift. We believe, on balance, that the employees' interest in securing notice and additional compensation for scheduling changes clearly outweighs the employer's primarily economic interest in not wishing to pay overtime to employees on emergency assignments. Accordingly, we hold that this proposal is mandatorily negotiable.

The second clause in dispute concerns the institution of a system of permanent shifts in accordance with seniority. This clause also directly and intimately affects the work and welfare of public employees since it would grant employees shift choice based on their seniority and some assurance that their hours of employment would not be changed. Thus, Local 195's first test has been satisified.

No statute or regulation preempts negotiation over this provision. N.J.S.A. 40A:14-118 is inapplicable for the reasons already stated. Thus, Local 195's second test has been satisfied.

We now consider whether negotiation over a permanent shift system would significantly interfere with governmental policy. We conclude that the PBA's proposal, as now worded, is not mandatorily negotiable because it would totally eliminate the Town's discretion to make or change shift assignments based

on any other factors besides seniority. Thus, the proposal does not recognize the Town's managerial prerogative to make a shift assignment based on qualifications when it seeks a particularly qualified individual to do a particular job on a particular task. In re Kearny PBA Local #21, P.E.R.C. No. 82-43, 7 NJPER 614 (¶12274 1981); Irvington. Accordingly, we hold that Article V, Paragraph D, as now worded, is not mandatorily negotiable.

The third proposal in dispute concerns meeting with the PBA and explaining major changes in departmental work schedules two weeks before any such changes are made. As with the first two proposals, we conclude that this proposal intimately and directly affects the Town's police officers because it affords them reasonable notice and an explanation of any changes which may be made in the work schedules which determine the days they work. There is also no statute or regulation preempting negotiation of this proposal. Finally, we reject the Town's argument that this proposal would significantly interfere with its ability to determine its staffing requirements. It has been repeatedly held that work schedules are generally negotiable within the framework established by the employer's unilateral right to determine service and manning levels. The instant proposal presents no threat to the determination of service or manning levels and, indeed, permits the employer to alter employee work schedules. The clause merely requires that the employer provide two weeks notice before it actually makes the changes. We hold that the employees' interests in receiving

reasonable notice of any contemplated change in their work schedules and an explanation of this change outweighs the employer's interest in not notifying its employees of such change and in not explaining the change.

ORDER

Article II's definition of Scheduled Duty Change and Article XXXI, Paragraph C of the predecessor contract between the Town of Phillipsburg and PBA Local 56 are mandatorily negotiable. The Town of Phillipsburg must negotiate over these proposals. Any unresolved disputes concerning these proposals may be submitted to the interest arbitrator as the parties previously agreed.

Article V, Paragraph D, as now worded, is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Hipp, Newbaker and Suskin voted in favor of this decision. Commissioners Graves and Hipp voted in favor of that part of the decision finding the first and third issues to be negotiable and dissented from that part of the decision finding the second issued to be non-negotiable. Commissioner Butch was not present.

DATED: Trenton, New Jersey
March 16, 1983
ISSUED: March 17, 1983