

P.E.R.C. NO. 92-117

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PROSPECT PARK,

Petitioner,

-and-

Docket No. SN-92-64

PATROLMEN'S BENEVOLENT ASSOCIATION  
LOCAL 114, PROSPECT PARK DIVISION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a successor contract proposal of Patrolmen's Benevolent Association Local 114, Prospect Park Division is not mandatorily negotiable. That proposal seeks to change the work schedules of police officers. The Commission concludes that the proposal would significantly interfere with the employer's prerogative to determine staffing levels.

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Appearances:

For the Petitioner, Genova, Burns & Schott, attorneys  
(Nathaniel L. Ellison, of counsel)

For the Respondent, Schneider, Cohen, Solomon, Leder &  
Montalbano, attorneys (Bruce D. Leder, of counsel)

DECISION AND ORDER

On December 10, 1991, the Borough of Prospect Park petitioned for a scope of negotiations determination. The Borough seeks a declaration that a successor contract proposal of Patrolmen's Benevolent Association Local 114, Prospect Park Division is not mandatorily negotiable. That proposal seeks to change the work schedules of police officers.

The parties have filed exhibits and briefs. These facts appear.

The Borough's police department consists of a chief, a captain, two sergeants, and seven patrol officers. The PBA represents the Borough's full-time police officers, excluding the chief. The Borough and the PBA entered into a collective

negotiations agreement effective from January 1, 1988 through December 31, 1990. The "Hours and Overtime" article of the agreement called for a normal work day of eight hours a day and a normal work week of 40 hours a week.

At present, the Borough operates on a 5-2 work schedule, that is five days on and two days off. Under the 5-2 schedule, every officer has two fixed consecutive days off a week and the shifts do not rotate. Most shifts have three officers assigned with a superior officer in charge; if there is no superior officer, two senior patrol officers are assigned together.

Based upon the time of calls for police assistance, the chief has determined that 3:00 p.m. to 3:00 a.m. Monday through Saturday are the busiest times and that three officers should be on duty during these times. The Borough sometimes elects not to fill a vacancy when one of the three officers is absent. Sunday is the slowest day. No superior officer is on duty and one patrol officer is assigned from 7:30 a.m. to 3:00 p.m.

During successor contract negotiations, the PBA proposed this revision of the "Hours and Overtime" article:

The work week will consist of four (4) consecutive 8 hour days, with two (2) twenty-four (24) [hour] days off. Any other hours assigned to work will be compensated at the overtime rate of pay. Officers assigned to work a work week of five (5) consecutive 8 hour days with 2 consecutive 24 hour days off, will be compensated with one (1) compensatory eight hour day off per calendar month. These compensatory days cannot be carried over. If not used in the calendar month the day will be lost.

This petition ensued.

In its brief, the PBA has offered this revised proposal:

The workweek shall consist of four eight hour fifteen minutes days with two consecutive twenty-four hour days off. Any other hours assigned to work will be paid at the overtime rate of pay.

At the Borough's option, the highest ranking officer (or other officer if special skills are required) may be assigned a Monday through Friday 40 hour per week schedule. Additionally, the Borough, at its option, may assign a police officer to work 7:00 p.m. to 3:00 a.m., Monday through Friday.

All police officers assigned to the 4 and 2 schedule shall have rotating days off, but shall have fixed shifts. In addition, these officers assigned to the 4 and 2 schedule shall be obligated to work eight extra hours every six weeks. The decision as to when the officers shall work and whether it shall be an eight hour day or two four hour tours shall be at the discretion of the Chief. The officer shall be given at least seven (7) days notice of the requirement to work. There will be no additional compensation for these hours.

If a situation arises where the special skills of a police officer are needed, the Chief shall have the right to change that officer's schedule so long as the special skills are needed.

Under this proposal, the two officers assigned to a 5-2 schedule will not receive an extra day off each month and the two sergeants would remain on fixed afternoon and midnight shifts. According to the PBA, the Borough has used a 4-2 schedule before without any supervision or discipline problems and a 4-2 schedule will improve morale by allowing all officers to have extra days off and some weekends off.

It appears that each police officer would work almost exactly the same number of hours a year under the PBA's revised proposal as under the current 5-2 schedule: the PBA estimates the difference to be 1.08 hours for each officer. However, each officer would receive about nine and one-half extra days off a year. It also appears, based on a chart submitted by the Borough which shows the effects of this 4-2 schedule over a six week cycle, that the Borough would be short of needed coverage on 39 shifts, would have more coverage than needed on 20 shifts, and would lack supervisory coverage on 19 shifts. Further, extending each officer's work day to eight hours and 15 minutes would result in overlapping between shifts.

The employer contends that the revised proposal is not mandatorily negotiable because it leaves gaps in police coverage which can only be filled by hiring new officers or assigning overtime and because it does not provide the necessary supervisory coverage. It also asserts that the extra 15 minutes a shift for each officer does not help it meet its staffing needs since it cannot lump the 15 minutes together to place officers on the shifts best suited to serve the community. The PBA contends that work schedules are generally negotiable and that its revised proposal does not significantly interfere with the employer's ability to provide adequate police coverage.<sup>1/</sup>

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<sup>1/</sup> The PBA also asserts that the employer's failure to raise a scope of negotiations question in its petition to initiate interest arbitration bars it from contesting the negotiability of the PBA's work schedule proposal. N.J.A.C. 19:16-5.5(c).

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

Thus, we do not consider the proposal's wisdom, only its abstract negotiability. We also limit ourselves to deciding whether the revised proposal is mandatorily negotiable since permissive subjects may not be submitted to interest arbitration absent the employer's consent. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Work hours, including work schedules, are mandatorily negotiable as a general rule. See Local 195, IFPTE, 88 N.J. 393 (1982); In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); City of Asbury Park and Asbury Park PBA Local No. 6, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90); Bor. of Maywood and Maywood PBA Local 102,

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1/ While this position may be correct for the initial PBA proposal, the PBA has since revised its proposal and a negotiability dispute exists over the revised proposal. We will resolve that dispute.

P.E.R.C. No. 83-107, 9 NJPER 144 (¶14068 1983), aff'd App. Div. Dkt. No. A-3071-82T2 (12/15/83); City of Newark v. IAFF, Local 1860, AFL-CIO, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981), aff'd App. Div. Dkt. No. A-4143-80T3 (3/25/83); Bor. of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Dkt. No. A-3329-79 (5/7/81). But a particular work schedule proposal will be held not mandatorily negotiable if it would significantly interfere with a governmental policy determination. See Irvington PBA Local #29 v. Town of Irvington, 176 N.J. Super. 539 (App Div. 1979), certif. den. 82 N.J. 296 (1980) (employer proved need to correct discipline problem on midnight shift, increase continuity of supervision, and improve training); Bor of Atlantic Highlands, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984) (proposed work schedule would have eliminated relief officer system and caused coverage gaps). Each case must be decided on its own facts. Mt. Laurel; Roselle.

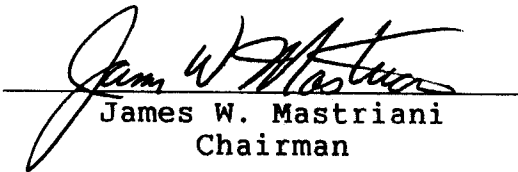
Assessing the facts of this case, we conclude that the revised proposal would significantly interfere with the employer's prerogative to determine staffing levels. The proposal would require the employer to extend each shift by fifteen minutes, thereby causing a considerable overlapping in coverage on parts of all shifts. The PBA asserts that this overlapping would improve communications between shifts, but it is up to the employer to determine whether duplicate coverage is warranted for that reason. Moreover, the revised proposal would often result in the employer

having more coverage than needed during entire shifts. Under these circumstances, we hold that the PBA's revised proposal is not mandatorily negotiable.

ORDER

The PBA's revised proposal is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: May 15, 1992  
Trenton, New Jersey  
ISSUED: May 18, 1992