

P.E.R.C. NO. 2000-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Petitioner,

-and-

Docket No. SN-2000-37

PLAINFIELD PBA LOCAL NO. 19
and PLAINFIELD SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a work schedule proposal submitted by the Plainfield PBA Local No. 19 and the Plainfield Superior Officers Association during negotiations for successor contracts with the City of Plainfield. The Commission concludes that the PBA/SOA proposal to modify the work schedule is mandatorily negotiable to the extent it seeks the implementation of a four days on, three days off work schedule based upon steady shift assignments, but is not mandatorily negotiable as currently written to the extent it provides that officers will be placed on the shifts through bidding based solely upon seniority.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Respondents.

Appearances:

For the Petitioner, DeMaria, Ellis & Bauch, L.L.C.,
attorneys (Kathryn V. Hatfield, on the brief); Waters,
McPherson, McNeill, P.C., attorneys (Frank G. Capece, on
the reply brief)

For the Respondents, S.M. Bosco Associates, consultants
(Simon M. Bosco, Ed.D., on the brief)

DECISION

On September 23, 1999, the City of Plainfield petitioned
for a scope of negotiations determination. The City seeks a
determination that a work schedule proposal submitted by City of
Plainfield PBA Local No. 19 and the Plainfield Superior Officers
Association during negotiations for successor contracts is not
mandatorily negotiable.

The parties have filed exhibits, certifications and
briefs.^{1/} These facts appear.

^{1/} The unions initially objected to the City's filing of
certifications and took exception to several assertions made
by its police chief and the City's director of the

The PBA and SOA represent all police officers excluding detectives and the police chief. The unions' collective negotiations agreements with the City expired on December 31, 1998. The parties are in negotiations for successor agreements and the unions have petitioned for interest arbitration.

Article VII of the previous agreements was entitled Hours of Employment. It provided, in part:

(a) Designated personnel will work eight and one-half (8 1/2) hours per day, four (4) days on, two (2) days off.

* * *

(e) Shift changeovers where applicable shall occur either every second Monday or after days off as determined by the Chief of Police on a quarterly basis which shall be posted and issued to each of the designated personnel.

(f) The exact starting time for any individual or group of individuals so assigned as designated personnel to the [4/2 schedule] may be changed by the Chief of Police as deemed necessary to provide for unforeseen needs for police service on twenty-four (24) hours notice to the individual or group of individuals....

(g) All other personnel ... shall work an eight (8) hour day, five (5) days on, two (2) days

1/ Footnote Continued From Previous Page

Department of Public Affairs and Safety. On January 19, 2000, we sought additional information on past work schedules from the parties, advised the unions that certifications are accepted in scope of negotiations cases, and gave them an opportunity to file their own certification. We also stated that the unions' request for a hearing did not meet the specificity requirements of N.J.A.C. 19:13-3.6. We now formally deny the request for a hearing.

off.... Such personnel's exact starting time may be changed, as deemed necessary, to provide for unforeseen needs for police service by the Chief of Police on twenty-four (24) hours notice....

(h) Should the necessity arise to change the exact starting times of personnel or the method of rotation of tours of duty currently in effect, inclusive of January 1995 Promulgated Work Schedules, on a more permanent basis, such change shall not take effect unless the city or its authorized agent has notified the PBA and all affected members at least seven (7) working days in advance of such change. The City reserves the right to change the work schedules as is consistent with the Law or negotiate with the PBA where applicable.

The unions have proposed to modify the work schedule as follows:

The work schedule for uniformed employees shall consist of four consecutive days on duty followed by four (4) consecutive days off. The work schedule for non-uniformed employees shall consist of four (4) consecutive days on duty followed by three (3) consecutive days off. Shift assignments shall be assigned steadily in accordance with seniority.

Although the expired agreements and prior agreements provide that employees will work a four days on, two days off rotating work schedule, the parties have agreed to several alternative work schedules on a trial basis. From 1975 through 1991, officers worked under a four days on, two days off schedule with rotating shifts. In 1991 the schedule was retained, but with steady shifts. In a memorandum of understanding executed on February 5, 1996, the parties agreed to modify the work schedule to a four days on, four days off steady shift schedule temporarily for six months from January to June 1996. Under that system,

assignments were made on a seniority basis to one of five squads, each with a different starting and ending time, except that lieutenants could only bid on assignments to two of the squads. That work schedule remained in effect until January 1, 1997, when the parties executed another memorandum of understanding providing that the work schedule would be four days on, four days off with rotating shifts.^{2/} That schedule was to remain in effect until June 30, 1997, but was extended until February of 1998. At that time, a four days on, three days off schedule with steady shifts went into effect. That schedule remained in effect until June 1999. The parties agreed to a four days on, four days off steady shift schedule for a trial period from June 8, 1999 through December 31, 1999. A memorandum of understanding was prepared to memorialize the parties' understanding, but was not executed. The police director indicates that each schedule change was because of staffing, supervision and accountability problems.

The 4/4 steady shift schedule was used in June and July, 1999. Asserting that the arrangement was not effective in addressing staffing, supervision and accountability problems, the

^{2/} Both memoranda contain language similar to that found in Article VII, ¶7-1, §§(f), (g) and (h) reserving to the City the right to deviate from the schedule.

Director, effective August 16, 1999, changed the schedule to the 4/2 rotating system described in Article VII of the agreement.^{3/}

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

^{3/} The unions filed an unfair practice charge and sought interim relief requiring the City to revert to the 4/4 schedule. A Commission designee denied the application. I.R. No. 2000-2, 25 NJPER 439 (¶30193 1999).

[87 N.J. at 92-93; citations omitted]

We will consider only whether the proposal is mandatorily negotiable. We do not decide whether proposals concerning police are permissively negotiable since the employer need not negotiate over such proposals or agree to retain them in a new agreement.

Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The City's officials assert that the four on, four off seniority-based steady shift schedule has significantly interfered with the department's ability to cure supervision, training, accountability and staffing problems. The City claims that steady shifts were unsatisfactory because shifts were assigned on a seniority basis, resulting in tours with young, inexperienced officers without supervision or training by higher-level trained officers. It further asserts that because some shifts contained all higher-ranking personnel, there was less accountability among those officers. The City maintains that allowing all shifts to be assigned based solely on seniority interferes with its managerial prerogative to make assignments based on qualifications and the need to assign officers based on particular tasks and training. However, the City also asserts that the 4/4 rotating shift arrangement, which was in place from January 22, 1997 through February 1998, interfered with its ability to address supervision, training, accountability and staffing. The certifications do not detail how the 4/4 rotating shift arrangement hurt departmental efficiency.

The unions point out that the City has raised the same concerns with both the rotating and steady versions of the 4/4 schedule. The PBA president's certification disputes that the problems identified exist and asserts that other urban departments of comparable size operate seniority-based shift bid systems and use a 4/4 schedule or a derivative. He states that under the shift bidding system, a 20-year veteran chose the midnight shift and asserts that similar examples exist. The unions argue that the City's concerns regarding scheduling and shift assignments are properly left to the negotiations process where both parties' interests can be raised and resolved.

Work hours have long been recognized as mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, 6-7 (1973); Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589, 594 (1980); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Bd. of Ed. Sec'ys, 78 N.J. 1, 8 (1978); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 12 (1973). Recognizing that the subject of work hours encompasses work schedules setting the hours and days employees will work, the Court has held that work schedules are generally negotiable. Local 195, at 411-412. Accord Hardin, The Developing Labor Law, 882-883 (3d ed. 1992). The Legislature has also expressly designated work hours as a negotiable terms and condition of employment for police officers and firefighters. N.J.S.A. 34:13A-14 et seq.; N.J.S.A. 34:13A-16g(2) and (8).

Consistent with the Supreme Court's cases and the Legislature's decrees, the Commission and the Appellate Division have generally held that work schedules of police officers and firefighters are mandatorily negotiable. See Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 113 (¶28054 1997). However, the Commission and the Appellate Division have also found exceptions to the rule of negotiability when the facts prove a particularized need to preserve or change a work schedule to protect a governmental policy determination. See, e.g., Irvington PBA Local #29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980); Borough of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984); Jackson Tp., P.E.R.C. No. 93-4, 18 NJPER 395 (¶23178 1992); Borough of Prospect Park, P.E.R.C. No. 92-117, 18 NJPER 301 (¶23129 1992).

Maplewood Tp. discusses the factors which determine the negotiability of work schedule proposals for public safety employees. We said:

When the Legislature approved interest arbitration as a means of resolving negotiations impasses over the wages, hours, and employment conditions of police officers and firefighters, it recognized that both management and employees would have legitimate concerns and competing evidence and it decided that the interest arbitration process was the best forum for presenting, considering, and reviewing those concerns and evidentiary presentations and the best way to ensure the high morale of these employees and the efficient operation of their departments. N.J.S.A. 34:13A-14 et seq. Indeed, the

Legislature expressly instructed interest arbitrators to consider the public interest and welfare in determining wages, hours, and employment conditions and contemplated that such considerations would be based on a record developed by the parties in an interest arbitration proceeding. N.J.S.A. 34:13A-16g(1). See also Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994). The question, then, is not which party should prevail in negotiations or interest arbitration or whether a particular proposal raises some legitimate concerns, but whether the facts demonstrate that a particular work schedule issue so involves and impedes governmental policy that it must not be addressed through the negotiations process at all despite the normal legislative desideratum that work hours be negotiated in order to improve morale and efficiency. [23 NJPER at 114]

The parties have asserted that there are discernible differences in the annual hours and days of work between the two systems. But those economic factors are not relevant to a negotiability determination, even though they are quite relevant to the interest arbitration proceeding.

The City also asserts that both the rotating and steady versions of the 4/4 shift were ineffective in addressing its supervision, training accountability and staffing concerns. It has not detailed how its use of the 4/2 rotating schedule, either now or in the past, solves those problems to the point where any other schedule would be non-negotiable. On this record, we reject the City's position that the parties' concerns about their work schedule proposals cannot be addressed through the negotiations process and interest arbitration proceedings, subject to our review if necessary. See Cumberland Cty., P.E.R.C. No. 97-116, 23

NJPER 236 (¶28113 1997) (rejecting claim to an unfettered right to set work schedules unilaterally).

Finally, the City argues that the proposal is not mandatorily negotiable because it lacks language recognizing its prerogative to deviate from seniority-based bidding to assign an officer with special skills or experience to a particular task. We agree.


Contractual provisions that dictate that shift placement be by seniority are not mandatorily negotiable. City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994); Cherry Hill Tp., P.E.R.C. No. 93-77, 19 NJPER 162 (¶24082 1993); Teaneck Tp., P.E.R.C. No. 93-66, 19 NJPER 122 (¶24058 1993); Middlesex Cty., P.E.R.C. No. 92-22, 17 NJPER 420 (¶22202 1991), aff'd NJPER Supp.2d 290 (¶231 App. Div. 1992); Lacey Tp., P.E.R.C. No. 87-120, 13 NJPER 291 (¶18122 1987); Pennsauken Tp., P.E.R.C. No. 87-101, 13 NJPER 161 (¶18071 1987); Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). By contrast, shift selection provisions are mandatorily negotiable if they expressly preserve management's right to act unilaterally when necessary -- for example, when special qualifications or levels of experience are needed for particular tasks, minimum staffing levels must be met, training is required, or emergencies occur. Hoboken; City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990); Borough of Carteret,

P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988); Franklin Tp.,
P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985). Applying these
precedents to the facts of this case, we hold that the shift
bidding aspect of the work schedule proposal, as written, is not
mandatorily negotiable.

ORDER

The proposal made by the City of Plainfield PBA Local No.
19 and the Plainfield Superior Officers Association to modify the
work schedule is mandatorily negotiable to the extent it seeks the
implementation of a four days on, three days off work schedule
based upon steady shift assignments, but is not mandatorily
negotiable as currently written to the extent it provides that
officers will be placed on the shifts through bidding based solely
upon seniority.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and
Sandman voted in favor of this decision. None opposed. Commissioner
Madonna abstained from consideration.

DATED: March 30, 2000
Trenton, New Jersey
ISSUED: March 31, 2000