

P.E.R.C. NO. 2000-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EGG HARBOR CITY,

Petitioner,

-and-

Docket No. SN-2000-38

P.B.A. LOCAL #77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Egg Harbor City for a restraint of binding arbitration of a grievance filed by P.B.A. Local #77. The grievance alleges that the City violated the parties' agreement when it changed police officers from steady to rotating shifts. The Commission declined to restrain arbitration in a previous case with these parties involving a work schedule issue finding that the employer did not show any particularized governmental policy need to change work schedules in the middle of a contract despite an alleged agreement, rather than at the end of the contract and through the normal collective negotiations process. The Commission concludes that the City has advanced the same arguments in this case and has not pointed to any change in the law or the facts.

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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Appearances:

For the Petitioner, Robert J. Pinnizzotto, attorney

For the Respondent, Schaffer, Plotkin & Waldman,
consultants (Myron Plotkin, on the brief)

DECISION

On October 6, 1999, the City of Egg Harbor City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local #77. The grievance alleges that the City violated the parties' collective negotiations agreement when it changed from steady to rotating shifts.

The parties have filed exhibits and briefs. Neither party submitted any certifications or requested a hearing. These facts appear based on the limited record.

The PBA represents regularly employed full-time police officers. On November 29, 1999, the parties reached a new contract during interest arbitration proceedings. That contract

replaced one effective from January 1, 1996 through December 31, 1998 and is effective from January 1, 1999 through December 31, 2002. The grievance procedure ends in binding arbitration.

Article II, Section A is entitled "Majority Representative." It provides, in part, that the PBA "has the right to negotiate as to ... hours of work."

Article VI is entitled "Management Rights." Subsection A provides, in part, that the City has a right to "schedule the hours of work." However, the practical impact of a management decision is subject to the grievance procedure. Further, the article states that nothing in it "shall alter or relieve the City of any of its obligations undertaken by this Agreement."

Article XVIII is entitled "Continuation of Benefits Not Covered by this Agreement." It provides, in part, that "any present or past benefits ... that have not been included in this contract shall be continued."

Article XIX, Section B is entitled "Hazardous Duty Pay." It provides, in part, that the "City will make a good faith attempt to continue the current practice/policy regarding the number of officers assigned and working each shift."

There are 13 full-time officers, including three sergeants, in the police department. The department is overseen by a public safety director. There is no police chief.

For many years, patrol officers have been assigned to steady shifts. However, officers' shifts could be and were

changed as necessary to facilitate training, meet staffing needs, or use an officer's special skills.

On June 23, 1999, the Director of Public Safety wrote a letter to a PBA shop steward. It stated:

This correspondence is predicated upon your memorandum reference the above subject dated June 19, 1999. As you are aware the Sergeants have been on rotating shifts for over a year. In addition new shifts have been implemented such as the 4 and 5 shift over two years ago.

Now the line personnel will also begin rotating shifts. Generally speaking the shifts will rotate in a reverse motion that is the men on the 1 shift will rotate to the 5 or 3 shift the men on the 2 shift will rotate to the 1 shift etc. Of course there may be a management need to alter this procedure however generally speaking that is how the shifts will rotate. The shifts will rotate generally on a 3 month basis.

The reason why some men had their shift rotated and others did not is basically the shift with the most men assigned to it is the 3 shift. Depending on special details, in-service vacation, etc. the 3 shift may have 4 to 5 men assigned to it and the 2 shift not counting the detective may have 3 men assigned to it. When the rotation occurs all personnel assigned to the 3 shift cannot rotate to the 2 shift as the need for that many officers is not warranted and the result is some officers will remain on the 3 shift however they will rotate during the next rotation cycle.

I have been permitting members of the bargaining unit to have input regarding the work schedule however a certain criteria must be followed and I review same for approval.

According to the City's brief, rotating shifts were implemented in 1997 to address unspecified issues of discipline, attitude, and morale; and to enable officers to be cross-trained,

learn leadership, and become familiar with how each officer works. The PBA grieved the change to rotating shifts and the City petitioned for a restraint of arbitration. We denied that request. City of Egg Harbor City, P.E.R.C. No. 98-125, 24 NJPER 223 (¶29105 1998) (Egg Harbor I). Steady shifts were then reinstated and the demand for arbitration was withdrawn. The City has not pointed to any problems since 1997.

Rotating shifts were reimplemented in the summer of 1999. According to the PBA's brief, those officers whose schedules were changed incurred additional costs for child care, lost opportunities to receive shift differential pay, and experienced dramatic changes in family life styles every few weeks.

In July 1999, the PBA grieved the change from steady shifts to a rotating schedule. The Director of Public Safety denied the grievance, citing the Management Rights clause. So did the City Administrator. He stated:

1. Since Past Practice has always been a defense used against the City of Egg Harbor City I feel I can also use the term Past Practice for my defense. The three (3) Police Sergeants and that would include Sergeants McColgan, Peterson, and Solomon have been on rotating shifts for almost two (2) years and you never once grieved that shift change. Also, you never grieved the power shifts that were implemented several years ago by the Public Safety Director.

2. The second reason for my denial is found in your Police Contract on page nine (9) midway through the first paragraph of letter A. It says that our Management Rights grant us the right to "schedule the hours of work". This comes right from your contract and was agreed upon by your fellow officers and PBA Local 77.

In closing I would like to restate that I totally deny your request for the Police Department to return to their "prior shifts." I feel rotating shifts is healthy for the Police Department and the City and also keeps complacency from developing with the Police Department. Thank you for your time and understanding in this matter.

On July 21, the PBA moved the grievance to the third step, but the City Council did not respond. On September 1, the PBA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we cannot consider the contractual merits of the grievance or the contractual defenses based on the Management Rights clause and past practice.

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

When a negotiability dispute involving police officers or firefighters arises over a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers. No preemption argument has been raised.

In Egg Harbor I, we declined to restrain arbitration over a change from steady to rotating shifts. We rejected an assertion that public employers have a per se prerogative to control police

work schedules and we found that this employer had not shown a particularized governmental policy need to change work schedules in the middle of a contract despite an alleged agreement, rather than at the end of the contract and through the normal collective negotiations process. The City has advanced the same arguments as in Egg Harbor I and has not pointed to any change in the law or the facts since that decision. Nor has it specified any operational problems since Egg Harbor I. We accordingly follow that decision and decline to restrain arbitration.

ORDER

The request of the City of Egg Harbor City for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000