

P.E.R.C. NO. 2004-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAPE MAY,

Petitioner,

-and-

Docket No. SN-2004-9

P.B.A. LOCAL 59,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the City of Cape May. The petition seeks a negotiability determination concerning a work schedule change for police officers represented by P.B.A. Local 59. In the absence of a disputed proposal during negotiations for a successor agreement or a demand for arbitration seeking to restrain arbitration of a grievance concerning the work schedule issue, the Commission declines to exercise its scope of negotiations jurisdiction. The Commission determines that any scope of negotiations issue can be addressed in the unfair practice proceeding based on a full record.

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, Anthony P. Monzo, P.C., attorney
(Andrew D. Catanese, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Charles E. Schlager, Jr., on the brief)

DECISION

On July 28, 2003, the City of Cape May petitioned for a scope of negotiations determination. The City seeks a negotiability determination with respect to a work schedule change for police officers represented by P.B.A. Local 59.

On August 8, 2003, the City filed its brief. In response to our request for grievance documents, the City responded that the scope petition inadvertently indicated that the dispute had arisen out of the grievance procedure; the scope filing is, in fact, the result of the City's decision to change shifts from 8 hours to 12 hours, and the PBA's filing of unfair practice charges challenging the employer's action. The City has

requested that processing of the unfair practice charge be stayed pending the outcome of its scope petition.

The City also submitted a demand for arbitration filed by the PBA on July 28, 2003, the same date the City filed its scope petition. The demand alleges that the City violated the parties' agreement by incorrectly calculating the rate of pay for court time, holdover, call back and work in excess of scheduled hours.

On August 15, 2003, the Chair advised the City that the Commission ordinarily will not decide scope of negotiations petitions unless a negotiability dispute has arisen during the course of negotiations for a successor agreement or a demand for arbitration has been filed and the petitioner is seeking to restrain binding arbitration of a grievance. See N.J.A.C. 19:13-2.2(a)(4). The Chair noted that the PBA's demand for arbitration does not contest the work schedule change and the City's scope petition does not seek to restrain arbitration of the PBA's grievance relating to overtime pay calculations. The Chair asked the City to explain why we should exercise our scope of negotiations jurisdiction in this matter.

On August 29, 2003, the City responded as follows:

As the City's August 8, 2003 brief indicates, this matter involves the City of Cape May's decision to change the Cape May Police Department work schedule from an 8-hour period to a 12-hour period. The City and PBA Local 59 met on several occasions to negotiate economic terms of this work shift change. However, no agreement was reached.

As a result, PBA Local 59 filed an unfair practice charge based on the work shift change. Local 59 also filed a request for arbitration on issues related to the computation of overtime pay and related items.

At the core of each of these three actions currently pending with the Commission is the City's decision to change to a 12-hour work period. Although the arbitration will likely require resolution regardless of the outcome of a scope determination, the unfair practice charge would essentially be decided by any scope of negotiations determination. Therefore, the City of Cape May requests that this scope petition be considered to expedite and promote the most efficient resolution of this dispute.


The PBA objects to holding the unfair practice charges in abeyance. It states that an exploratory conference on the unfair practice charges could bring about a voluntary resolution and settlement of the dispute. Further, it states that the relief sought by the City's scope petition is flawed in that it appears to be asking us to issue a declaratory judgment as to whether work schedules are negotiable or a managerial prerogative.

We decline to exercise our scope of negotiations jurisdiction in this proceeding. The PBA's demand for arbitration does not challenge the City's decision to change work schedules and the City does not seek to restrain arbitration over the PBA's compensation grievance. Any scope of negotiations issue can be addressed in the unfair practice proceeding based on a full record.

ORDER

The scope of negotiations petition is dismissed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: October 30, 2003
Trenton, New Jersey
ISSUED: October 30, 2003