

P.E.R.C. NO. 2005-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2005-043

P.B.A. LOCAL NO. 11, TRENTON
SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Trenton for a restraint of binding arbitration sought by P.B.A. Local No. 11, Trenton Superior Officers Association. The Association seeks to arbitrate shift changes made in the Vice Enforcement unit and for certain deputy chiefs. The Commission holds that public employers have a prerogative to determine hours and days during which a service will be operated and to determine the staffing levels at any given time. The Commission holds that a restriction on the City's right to change the Vice Enforcement Unit shift and to change the shifts of officers to coincide with their assignments would substantially limit the City's governmental policies associated with having an effective vice enforcement unit and of having officers work the shifts of the unit to which they are assigned.

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, Laufer, Knapp, Torzewski & Dalena,
LLC (Stephen E. Trimboli, on the brief)

DECISION

On January 10, 2005, the City of Trenton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration sought by P.B.A. Local No. 11, Trenton Superior Officers Association. The Association seeks to arbitrate shift changes made in the Vice Enforcement Unit and for certain deputy chiefs.

The City has filed a brief, exhibits and the certification of its police director. The Association did not file a brief. These facts appear.

The Association represents sergeants, lieutenants, captains and deputy chiefs. The parties' collective negotiations agreement is effective from July 1, 2000 to December 31, 2005. The grievance procedure ends in binding arbitration.

Officers in the Vice Enforcement Unit work eight hours per day and have a schedule of five days on, two days off. The unit is responsible for investigating and apprehending individuals or groups engaged in prostitution, illegal gambling, or the distribution of illegal narcotics. Most activity occurs during the late afternoon and evening hours. The unit's work hours were changed from 9:00 a.m. - 5:00 p.m. to noon - 8:00 p.m. to coincide with the time services are most needed.

With respect to the deputy chiefs, the City reassigned the two deputy chiefs to the patrol unit pending the abolishment of that rank and their subsequent demotion to captain. The City did not create a new work schedule for them, but instead assigned them to the existing work schedule for the patrol unit to which they were reassigned.

On October 26, 2004, the Association filed a demand for arbitration. The Statement Identifying the Grievances to Be Arbitrated stated:

There has been a shift change ordered by the Police Director contrary to existing contractual provisions, past practice and other contrary SOPs. More specifically, there has been an improper shift change for the Vice Unit as well as shift changes for certain Deputy Chiefs of Police John Gauebaur and Al Henry.

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 do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

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 and 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. [Id. at 92-93; citations omitted]

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 claim has been made.

Public employers have a prerogative to determine the hours and days during which a service will be operated and to determine the staffing levels at any given time. But within those determinations, work schedules of individual employees are, as a general rule, mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982). That rule applies in cases involving the work schedules of police officers. In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); 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); see also Teaneck Tp. and Teaneck Tp. FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003). But a particular work schedule may not be mandatorily negotiable if it would significantly interfere with 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) (employer proved need to correct discipline problem on midnight shift, increase continuity of supervision, and improve training). Each case must be decided on its own facts. Teaneck; Mt. Laurel.

In this case, the City has established a need to change the starting and ending times of the Vice Enforcement Unit. On this record, we conclude that a contractual restriction on its right to change this shift would substantially limit the governmental policies associated with having an effective vice enforcement unit. Accordingly, we restrain arbitration over this portion of the grievance.

We also restrain arbitration over the shift changes for the two deputy chiefs. The two officers were assigned to positions in patrol units and their shifts were changed to coincide with their assignments. On this record, we conclude that a contractual restriction on the City's right to change their shifts would substantially limit the governmental policy of having officers work the shifts of the units to which they were assigned.

ORDER

The request of the City of Trenton for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Mastriani and Watkins voted in favor of this decision. Commissioner Katz was not present. None opposed.

DATED: March 31, 2005
Trenton, New Jersey
ISSUED: March 31, 2005