

P.E.R.C. NO. 2006-27

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Petitioner,

-and-

Docket No. SN-2005-074

SPRINGFIELD SUPERIOR OFFICERS  
ASSOCIATION, P.B.A. LOCAL 76A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of Springfield for a restraint of binding arbitration of a grievance filed by the Springfield Superior Officers Association, P.B.A. Local 76A. The grievance asserts that the unilateral creation of two new shifts for two lieutenants violates the parties' agreement. The Commission grants a restraint to the extent the grievance challenges the employer's prerogative to require new shifts for lieutenants in order to implement its new command structure. The Commission denies a restraint to the extent the grievance seeks to enforce an alleged contractual obligation to have the SOA and the Township develop work schedules consistent with the new command structure.

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, Ruderman & Glickman, P.C.,  
attorneys (Mark S. Ruderman, of counsel and on the  
reply brief; Ellen M. Horn, on the brief)

For the Respondent, Mets & Schiro, LLP, attorneys  
(James M. Mets, of counsel and on the brief; Roosevelt  
Porter, on the brief)

DECISION

On May 2, 2005, the Township of Springfield petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Springfield Superior Officers Association, P.B.A. Local 76A. The grievance asserts that the unilateral creation of two new shifts for two lieutenants violates the parties' agreement.

The parties have filed briefs and exhibits. The Township has submitted the certification of its police chief. These facts appear.

The Association represents the department's eight sergeants and one lieutenant. The parties have negotiated but not yet signed an agreement that is effective from January 1, 2003 through December 31, 2007. Article XV provides that work schedules must be developed by the SOA and the Township. The grievance procedure ends in binding arbitration.

In an interest arbitration award dated December 23, 2003, the arbitrator awarded a change from the 4-2 schedule, where officers generally worked an 8-hour day, to a 4-4 schedule, where officers work 10 3/4 hours per day. The award provided that the shift change would be effective on or about January 1, 2004 (the last year of the awarded contract) or as soon thereafter as operationally feasible. The award also stated that the operational details of the schedule were to be developed by the PBA and Township designees. The new schedule was implemented in early February of 2004.

Under the 4-4 schedule, the department established five shifts: 5:45 a.m. to 4:30 p.m.; 8:15 a.m. to 7:00 p.m.; 1:15 p.m. to 12:00 midnight; 7:00 p.m. to 5:45 a.m. and 9:30 p.m. to 8:15 a.m. With the exception of specialists such as the DARE officer, traffic officer and crime prevention officer, all patrol officers were assigned to one of the five shifts. The officers are divided into Shift A and Shift B. When Shift A works, Shift B is off, and vice-versa. A sergeant was assigned to each shift

except the 5:45 a.m. to 4:30 p.m. shift. Lieutenant Hammer was assigned to that shift. Because of shift overlaps, sergeant coverage sometimes overlaps.

The captain and the chief work a 5-2 schedule. Captain James Hietala works from 8:00 a.m. to 4:00 p.m. and Chief William Chisholm works from 6:30 a.m. to 4:30 p.m.

When a patrol officer was promoted to sergeant and assigned to the 5:45 a.m. to 4:30 p.m. shift, it caused dual supervision on that shift since Lieutenant Hammer was also assigned to that shift. In February 2005, the chief assigned Hammer to a new shift that started at 10:15 a.m. and ended at 9:00 p.m. In addition, Hammer was assigned to the third and fourth days of Shift A and the first and second days of Shift B, with the result that his schedule overlaps at some point in the rotation with that of every sergeant. By contrast, under the prior schedule, Hammer had direct communication with only two of the department's sergeants. According to the chief, this schedule alteration eliminated duplicate supervision on one shift and allowed for a greater management presence - defined as officers with the rank of lieutenant or higher - throughout the workweek. In the chief's view, the schedule adjustment also improved continuity of supervision over all shifts and increased communication among the shifts.

In both his certification and an analysis prepared before Hammer's shift change, the chief states that the department anticipates promoting one of the sergeants. After the promotion, the department will have a second lieutenant who will also work two days on Shift A and two days on Shift B on another new - 9:00 p.m. to 7:45 a.m. - shift. There will be no overlap in the lieutenants' schedules and the department will have a management-level officer on duty at most times. The analysis adds that each lieutenant will interact with the three sergeants on duty, a circumstance that will "hopefully create a distinction" between the ranks of sergeant and lieutenant. The chief concludes that otherwise the two ranks will take on similar duties, which would eliminate the need for one of the ranks.

On February 21, 2005, the Association filed a grievance alleging that the creation of the two new shifts violated Article XV, requiring that all work schedules be developed by the SOA and the Township. The chief denied the grievance. On April 5, the Association 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 do not consider the merits of the grievance or any contractual defenses the employer may have.

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981); 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 statute or regulation is alleged to be preemptive on this case.

The Township argues that it has a non-negotiable prerogative to implement a new shift to address managerial, supervisory and communications concerns. The Association counters that work schedules are generally negotiable and that the Township has not met its heavy burden of showing it needed to change work hours unilaterally.

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, negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982); 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).

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).

However, a grievance protesting a work schedule change is not legally arbitrable if enforcement of a particular work schedule agreement would substantially limit 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); City of Millville, P.E.R.C. No. 2003-21, 28 NJPER 418 (¶33153 2002). For example, we have restrained arbitration over work schedule changes effected to address supervision or operational problems or to adjust officers' schedules to conform to the employer's judgment about when services should be delivered. See, e.g., City of Trenton, P.E.R.C. No. 2005-60, 31 NJPER 59 (¶28 2005) (employer had prerogative to change vice unit's hours to align unit's schedule with the time services were most needed); Millville (employer's un rebutted evidence that 12-hour shift had resulted in staffing, supervision, and fatigue problems - and had compromised officer

safety because of reduced number of officers on evening shift - justified a mid-contract change from a schedule with 12 and 8-hour shifts to one with 8-hour shifts only); City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997) (employer had prerogative to change a deputy chief's and captain's work schedule to provide a command-level presence on weekends).

Within this framework, we evaluate the parties' interests and arguments. On the one hand, we conclude that the Township has established a governmental policy basis for establishing new shifts for lieutenants in order to implement its new management command structure. Given the chief's belief that supervision, communications, and the overall delivery of police services will improve if an officer of lieutenant rank or higher is on duty at all times, lieutenant work hours are intertwined with governmental policy determinations about the type of supervisory command structure the department should have. Therefore, the grievance is not legally arbitrable to the extent, if any, it seeks to enforce an alleged agreement to preserve, for lieutenants, the current shifts established to implement the 4-4 schedule. Such an agreement would substantially limit governmental policymaking.



On the other hand, the SOA asserts that Article XV requires the joint development of all work schedules and the Township has not shown that the shifts it unilaterally implemented for lieutenants are the only shifts that would accomplish its governmental policy objective of ensuring that a management level officer is on duty at all times. See Gloucester Cty., P.E.R.C. No. 89-70, 15 NJPER 69 (¶20026 1988) (employer had a prerogative to add a shift extending beyond 4:00 p.m., but union could negotiate over post 4:00 p.m. work hours). Article XV is a mandatorily negotiable work schedule provision. See Mt. Laurel. Applying the Gloucester analysis to the particular facts in this case, we hold that the Township has a prerogative to require a command level presence at all times, but the SOA may seek to enforce an alleged contractual obligation to have the SOA and the Township develop work schedules consistent with the new command structure. See also Borough of Sayreville, P.E.R.C. No. 91-35, 16 NJPER 542 (¶21244 1990) (absent emergency, employer had to negotiate before implementing new power shift previously proposed by union in negotiations).

#### ORDER

The request of the Township of Springfield for a restraint of binding arbitration is granted to the extent the grievance challenges the employer's prerogative to require new shifts for

lieutenants in order to implement its new command structure. The request is denied to the extent the grievance seeks to enforce an alleged contractual obligation to have the SOA and Township develop work schedules consistent with the new command structure.

BY ORDER OF THE COMMISSION

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

Lawrence Henderson  
Chairman

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

DATED: October 27, 2005  
Trenton, New Jersey  
ISSUED: October 27, 2005