

P.E.R.C. NO. 2014-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Petitioner,

-and-

Docket No. SN-2013-062

HOBOKEN MUNICIPAL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Hoboken for a restraint of binding arbitration of a grievance filed by the Hoboken Municipal Employees Association. The grievance asserts that the City violated the parties' collective negotiations agreement when it ceased allowing civilian dispatchers to leave police headquarters during their one-hour meal breaks. Noting that all police officers can perform dispatch duties in an emergency, the Commission holds that the dispatchers' interest in negotiating over the past practice of leaving headquarters during meal breaks outweighs the City's interest in unilaterally eliminating the practice because it has not been shown to significantly interfere with any governmental policy determination.

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, Weiner Lesniak, LLP, attorneys
(Bryant Gonzalez, of counsel)

For the Respondent, Loccke, Correia, Limsky, & Bukosky,
attorneys (Marcia J. Tapia, of counsel)

DECISION

On March 28, 2013, the City of Hoboken filed a scope of negotiations petition. The City seeks a restraint of binding arbitration of a grievance filed by the Hoboken Municipal Employees Association (HMEA). The grievance asserts that the City violated the parties' collective negotiations agreement when it ceased allowing civilian dispatchers to leave police headquarters during their one-hour meal breaks.

The City has filed a brief, exhibits, and the certification of Chief of Police Anthony P. Falco. The HMEA has filed a brief. These facts appear.

The HMEA represents a broad-based unit of non-uniformed blue and white collar employees. The City and HMEA are parties to a

collective negotiations agreement (CNA) effective from July 1, 2002 through June 30, 2005 that was succeeded by a memorandum of agreement that expired July 1, 2008. The parties are currently in negotiations for a successor agreement.^{1/} The grievance procedure ends in binding arbitration.

Article X of the CNA is entitled "Workday and Work Week." Article X, Sections 3 and 4 set out the regular workweek hours for blue and white collar employees and note that the hours are "(Including one (1) hour lunch)."

Chief Falco certifies that the Department was staffed by seven (7) civilian dispatchers until April 1, 2013 when it expanded to nine (9). Two (2) dispatchers are assigned to work each shift. In May 2011, Chief Falco noticed that only one of two assigned dispatchers was in Police Headquarters during a shift because the other one had left the premises to take a lunch break. Chief Falco certifies that in providing efficient public safety services to the City's residents, it is imperative that one dispatcher be available to answer calls while the other remains available to dispatch responders. When only one dispatcher is available for a shift, he assigns a police officer

^{1/} The HMEA has also filed an unfair practice charge alleging the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally changing terms and conditions of employment while the parties are in negotiations for a successor agreement.

to assist the dispatcher in order to ensure an effective level of service.

On June 1, 2011, the Chief issued the following Memorandum to Uniformed Bureau Commanders/Desk Officers/Comm. Supervisors:

Subject: Civilian Dispatchers - Meal Breaks

The practice of allowing civilian dispatchers to leave police headquarters during their one hour meal breaks will cease immediately. Civilian dispatchers will still be entitled to their contractual hour meal break, however will not leave headquarters for the duration of their break. They will be allowed to use the roll call room for their meals during this period.

On June 30, 2011, the HMEA filed a grievance contesting the directive that dispatchers take their hour meal breaks in police headquarters. After the grievance was denied at each step, the HMEA demanded binding arbitration on August 23, 2011. This petition ensued.

Our jurisdiction is narrow. We consider the negotiability of this dispute in the abstract. We express no opinion about the contractual merits of the grievance or any contractual defenses the Township may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item

intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The City argues that where negotiations over work shift schedules significantly interfere with a managerial prerogative, the courts have found that the work schedules are no longer mandatorily negotiable.^{2/} Citing Salem City Bd. of Ed. and Salem City Teachers Ass'n, P.E.R.C. No. 82-115, 8 NJPER 355 (¶13163 1982), aff'd NJPER Supp.2d 133 (¶114 App. Div. 1983), it notes that this Commission found a decision requiring school nurses to remain in the building during their lunch periods was non-negotiable due to the school's dominant educational policy concern for the safety and well-being of the students. The City argues that its concern for maintaining order and efficiency by

^{2/} The City cites: Irvington PBA Local 29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1982); and Borough of Atlantic Highlands and Atlantic Highlands PBA Local 242, P.E.R.C. No. 83-75, 9 NJPER 46 (¶14021 1982), recon. den. P.E.R.C. No. 83-104, 9 NJPER 137 (¶14065 1983), rev'd 192 N.J. Super. 71 (App. Div. 1983), certif. denied 96 N.J. 293 (1984)

having both dispatchers available at all times to respond to emergency situations is a non-negotiable managerial prerogative.

The HMEA responds that Salem City is distinguishable because it involved three schools with one nurse at each school, so there was no backup during lunch; whereas here there is at least one dispatcher on duty while the other is out on lunch. The HMEA also notes that the Salem City nurses had a cafeteria available to obtain either a hot or cold meal, whereas the dispatchers have to depend on uniformed officers or other staff for meal pick-up. The HMEA argues that Salem City is factually distinct because in that case the only qualified people to give proper medical care were the nurses, whereas here Chief Falco certifies that police officers are called in to dispatch when only one dispatcher is available. Citing Freehold Reg. H.S. Bd. of Ed. and Freehold Reg. H.S. Ed. Ass'n, P.E.R.C. No. 81-58, 6 NJPER 548 (¶11278 1980), aff'd NJPER Supp.2d 113 (¶93 App. Div. 1982), the HMEA asserts that the Commission has refused to restrain arbitration of proposals allowing teachers to leave the premises during their lunch period because an employer's ability to act to meet emergencies is implicitly reserved in all situations. It argues that rather than institute a blanket restriction impacting the rights of all dispatchers, the City can always require the employee to remain on the premises during an emergency.

Recently, applying the Local 195 balancing test, we reaffirmed Salem City holding that a board of education has a managerial prerogative to require school nurses to remain in the building during duty-free time. East Orange Bd. of Ed., P.E.R.C. No. 2012-20, 38 NJPER 193 (¶65 2011). The unique fact in the school nursing context is that the school nurse is the only qualified employee to perform essential first aid during a medical emergency. Here, all police officers can perform dispatch duties in an emergency and the employer has the prerogative to require the dispatcher to remain during an emergency. See, e.g. Atlantic County Pros., P.E.R.C. No. 2008-24, 33 NJPER 262 (¶99 2007) (Employer's interest in responding to increase in homicides outweighed employees' interest in maintaining contractual work hours).

We do not believe that negotiations over the past practice concerning meal breaks would significantly interfere with any governmental policy determination. On balance, we find the dispatchers' interest in negotiating prior to losing the ability to leave headquarters for a meal break outweighs the City's interest in unilaterally eliminating the practice. We note the City did not provide any examples of instances where safety or security was jeopardized because a dispatcher was at lunch.

We make no judgment as to the merits of the grievance or whether the practice should continue. We also make no judgement as to whether the City committed an unfair practice.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. None opposed. Commissioner Jones recused himself. Commissioners Voos and Wall were not present.

ISSUED: December 19, 2013

Trenton, New Jersey