

P.E.R.C. NO. 2016-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CLARK,

Petitioner,

-and-

Docket No. SN-2016-028

UNION COUNCIL NO. 8,
I.F.P.T.E., AFL-CIO,

SYNOPSIS

The Public Employment Relations Commission grants the Township of Clark's request for a restraint of binding arbitration of a grievance filed by Union Council No. 8, I.F.P.T.E., AFL-CIO. The grievance contests the Township's unilateral change of the grievant's work hours/schedule. Finding that the Township curtailed the grievant's evening hours because municipal court sessions were no longer scheduled after 5 p.m. and did not normally run past 5 p.m., in addition to the Police Chief's belief that modern technology obviated the public's need for physical access to a records clerk in the evening, the Commission restrains arbitration and notes that the predominate interest affected by the grievance is the Township's managerial prerogative to determine when the public should have access to a records clerk and when to assign work outside of regular work hours/schedule.

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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UNION COUNCIL NO. 8,
I.F.P.T.E., AFL-CIO,

Respondent.

Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Robert J. Merryman, of counsel and on the brief)

For the Respondent, Loccke, Correia & Bukosky, attorneys (Lauren Sandy, of counsel and on the brief)

DECISION

On November 12, 2015, the Township of Clark (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Union Council No. 8, I.F.P.T.E., AFL-CIO (Council 8). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) when it unilaterally changed the grievant's work hours/schedule.

The Township filed a brief, exhibits, and the certification of its Chief of Police (Chief). Council 8 filed a brief.^{1/} The Township also filed a reply brief. These facts appear.

Council 8 represents, among others, clerical and secretarial employees working within the Township offices and the Police Department. The Township and Council 8 are parties to a CNA in effect from January 1, 2015 through December 31, 2019. The grievance procedure ends in binding arbitration.

Article 5 of the CNA, entitled "Hours of Work," provides in pertinent part:

Section 1. The established hours of work for all employees, (except as otherwise hereinafter expressly provided,) shall be thirty-five (35) hours in a workweek of five (5) days, beginning on Monday and terminating on Friday. Each day's work shall begin at 8:30 a.m. and terminate at 4:00 p.m. with a half hour ($\frac{1}{2}$) hour lunch break.

The Chief certifies that since February 2015, he has been reviewing the operations of the Police Department with the goal of providing effective and efficient services despite limited resources. The Police Department has a full-time Records Clerk position. According to the Chief, many years ago the Police Department increased the hours of the Records Clerk outside the regular workday in order to provide services to the public when

^{1/} Pursuant to N.J.A.C. 19:13-3.6(f)1, "[a]ll briefs filed with the Commission shall. . .[r]ecite all pertinent facts supported by certification(s) based upon personal knowledge."

municipal court was in session during the evening. On April 25, 2000, the Township, Council 8, and the grievant executed a Memorandum of Understanding (MOA) that provides:

The purpose of this memorandum is to memorialize the terms and conditions of night duty performed by Records Clerk [Grievant]. In December of 1999, the issue of overtime compensation for night duty came into dispute between the Administration and [the grievant]. The overtime in dispute amounts to 300 hours retained in [the grievant's] overtime account and relates only to evening records overtime accrued between January 1995 and December 1999.

In the following months, several meetings & discussions were held on the issues of this matter in search of an equitable resolution. Among the participants were [the] Mayor. . .; [the] Business Administrator. . .; [the] Chief [of Police]. . .; [a police] Captain. . .; [the grievant]. . .; . . .and [union officials].

The following proposal is the product of those meetings and discussions, and is presented here for consideration by all concerned parties.

Effective January 1, 2000, Records Clerk [Grievant] shall open the Records Bureau to the public from the hours of 6 p.m. to 8 p.m. one night per week as assigned by the Chief of Police. This two hour assignment shall be in addition to the regular work day as outlined in the Council 8 Collective Bargaining Agreement.

In consideration for this two hour work assignment, [the grievant] shall be compensated the next working day with two hours compensatory leave, taken at the end of her scheduled working day. It is understood that no overtime shall result from this agreement and that compensatory time granted

may not be converted to cash. If evening hours are cancelled due to illness, vacation or other contingency, no compensatory time will be granted the following day.

Any Records night duty performed after January 1, 2000 for which overtime slips have been submitted, shall be recalculated to reflect this agreement. [The grievant's] overtime account will be revised accordingly.

Of the 300 hours identified as Records overtime accrued between 1995 and 1999, [the grievant] agrees to relinquish 100 hours to the Town; 200 hours will be retained in her overtime account.

The purpose of this agreement is to: recast the past practice of overtime compensation for evening Records work; establish a well-defined, collaborative working plan which is fair and equitable to the employee and the Town; avoid formal grievance procedures related to the past practices by the employer and employee.

The Chief certifies that the municipal court has not scheduled evening sessions for approximately five years and that court sessions rarely go past 5:00 p.m. and that with the advent of e-mail and facsimile, there is no longer a need for the public to have access to the Records Clerk outside of the regular workday. The Chief further certifies that based on these factors, he determined that the most effective and efficient use of the Records Clerk is for her to work during regular hours, the same as other clerical employees, and that preventing same would substantially interfere with his ability to effectively run the Police Department. Accordingly, in a memorandum dated October

12, 2015, the Chief advised the Records Clerk that she would only be working regular hours (8:30 a.m. to 4:00 p.m., weekdays) effective January 1, 2016.

On October 14, 2015, Council 8 filed a grievance contesting the Township's unilateral change to the grievant's work hours/schedule. The parties agreed to proceed to the final step of the grievance procedure. On October 29, 2015, Council 8 filed a Request for Submission of a Panel of Arbitrators with the State Board of Mediation, identifying the grievance to be arbitrated as the "unilateral change in [the grievant's] working hours." This petition ensued.

The Township argues that it eliminated the Records Clerk's hours beyond the regular workday pursuant to its managerial prerogative to determine when it will, and will not, provide a public service and when to offer overtime work. With respect to the MOA, the Township maintains that it never negotiated a change in the Records Clerk's regular hours but instead made a policy decision to schedule additional evening hours and agreed to a method of compensating the grievant for working the extra hours. The Township contends that the subject grievance improperly seeks a decision from an arbitrator requiring it to continue to provide a public service (i.e., access to records during evening hours) despite the fact that the Township no longer has a need or desire to provide such an unnecessary service.

Council 8 disputes the Township's claim that the MOA does not constitute a change in the Clerk's negotiated work schedule and argues that the later change, eliminating her night hours, was mandatorily negotiable. Council 8 also maintains that even if the Township has a managerial prerogative to determine the hours during which a service will be provided, the related impact of its decision upon the grievant's workload is negotiable and arbitrable.

In reply, the Township states that even if there was a schedule change, the Township was not required to negotiate it under Oakland Public Library, P.E.R.C. No. 2010-71, 36 NJPER 115 (¶48 2010). As for Council 8's claim that the Township's action had a severable impact upon the Records Clerk, the Township notes that Council 8 did not provide a certification in support of the claim and argues that the claim lacks factual support.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

We have consistently held that work schedules are mandatorily negotiable except where the employer has demonstrated that maintaining a particular schedule 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) (given demonstrated need to correct supervision and discipline problems on midnight shift, employer had prerogative to unilaterally change shift assignments so that patrol officers worked the same rotating shift as their superiors); see also, Local 195, supra, 88 N.J. at 411-413 (finding mandatorily negotiable proposal stating "where practicable, normal workweek shall consist of five consecutive

days" given that provision did not interfere with employer's power to determine the number or classification of employees working at any given time or the hours or days during which a service will be operated).

A public employer has a managerial prerogative to determine when governmental services will be delivered and the manning or staffing levels necessary for the efficient delivery of those services and, derivative from those determinations, when overtime work is necessary. See, e.g., City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982) and Hoboken Bd. of Educ., P.E.R.C. No. 93-14, 18 NJPER 444 (¶23199 1992).

In Oakland Public Library, supra, P.E.R.C. No. 2010-71, we restrained arbitration of a grievance challenging the unilateral change of a librarian's work hours from 8 a.m. to 3 p.m. to her prior hours of 10 a.m. to 5 p.m., the same hours of other employees. We did so because the employer articulated operational efficiency reasons and security and minimum staffing concerns that, on balance, outweighed the librarian's interest in a preferred work schedule. Specifically, and with regard to efficiency reasons, the librarian's job duties included contacting vendors who did not open before 9 a.m., and with regard to safety and minimum staffing concerns, the librarian was the sole employee on the premises from 8 a.m. to 10 a.m. and, conversely, the other staff member on her floor was left alone

from 3 to 5 p.m., and the employer determined that it needed two employees on that floor given an increase in library patrons.

Within this framework, we initially find that the Township curtailed the evening hours of the Records Clerk because municipal court sessions were no longer being scheduled after 5 p.m. and did not normally run past 5 p.m. and based upon the Chief's belief that with the use of email and facsimiles, the public does not need physical access to the Clerk in the evening. We also find that the predominate interest affected by the grievance is the Township's managerial prerogative to determine when the public should have access to the Records Clerk and when to assign work outside of the regular work schedule and that it makes no difference to the outcome whether one characterizes the MOA as a negotiated work schedule or a method for compensating additional hours worked. Lastly, we find that the loss of compensatory time as a result of the exercise of this managerial prerogative is not a severable claim, see, e.g., City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987), and that Council 8 has not produced any evidence that the Clerk's workload increased as a result of the Township's action.

ORDER

Accordingly, the Township's request to restrain arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Voos and Wall were not present.

ISSUED: January 28, 2016

Trenton, New Jersey