

P.E.R.C. NO. 2020-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COLTS NECK TOWNSHIP,

Petitioner,

-and-

Docket No. SN-2020-012

TEAMSTERS LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Township's request for a restraint of binding arbitration of Local 11's grievance alleging the Township violated the parties' CNA when it reduced the hours of the Secretary to the Director of Public Works from 37.5 hours per week to 35 hours per week - without a reduction in pay. The Commission concludes that the Township's unilateral change to the Secretary's schedule is mandatorily negotiable and legally arbitrable as the Commission has consistently held that changes to individual work schedules are mandatorily negotiable absent a showing that negotiation over the schedule change would limit governmental policy determinations.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Bruce W. Padula, of counsel and on the brief)

For the Respondent, Kroll Heineman Carton, LLC, attorneys (Seth B. Kennedy, of counsel and on the brief)

DECISION

On September 23, 2019, the Township of Colts Neck (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 11 (Local 11). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) when it reduced the hours of the Secretary to the Director of Public Works from 37.5 hours per week to 35 hours per week - without a reduction in pay.

The Township filed briefs, exhibits, and the certification of its Township Administrator, Kathleen Capristo. Local 11 filed a brief with exhibits.^{1/} These facts appear.

Local 11 represents all regularly employed full-time employees, including in pertinent part, certain clerical employees and the Secretary to the Director of Public Works (Secretary). The Township and Local 11 are parties to a CNA with a term of January 1, 2018 through December 31, 2020. The grievance procedure ends in binding arbitration.

Article 6(A) of the CNA, entitled "Hours of Work and Overtime," provides in pertinent part:

The normal work week for all Unit employees shall be thirty-five (35) hours, Monday through Friday, from 8:30 a.m. to 4:30 p.m. with a one-hour lunch period. The Secretary to the Director of Public Works shall work a thirty-seven and one-half (37.5) hour week, Monday through Friday. Exceptions to these hours can be made by the Department Head, with the approval of the Township Administrator. The Township retains the right to change the normal work week provided thirty (30) days' notice is given to the Shop Steward.

By letter dated July 1, 2019, Capristo notified Local 11 that the Township was changing the hours for the Secretary pursuant to the parties' CNA, thereby reducing the Secretary's hours from 37.5 to 35 per week, without a reduction in pay.

^{1/} Local 11 did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

Capristo further certifies that the rest of the members of the 5-person bargaining unit, to which the Secretary belongs, also work 35 hours per week. Capristo certifies that the Township changed the Secretary's hours to efficiently deploy her during the hours when she was needed and that the Secretary was not needed to work more than the 35 hours per week.

Local 11 filed a grievance on July 3, 2019 alleging that there was an "unjust change of work hours" and seeking a "return to contractual hours" or a 7.14% increase to all unit members' salaries to match the effective raise that the Secretary received from her reduction in hours. On July 15, Capristo denied the grievance on procedural grounds and on the basis that the Secretary's schedule change was permitted by the CNA and the Township's managerial prerogative.

Local 11 asserts that on May 15, 2018 during collective negotiations, the Township proposed a modification to Article 6(A), that would change the Secretary's work schedule to Monday through Friday from 7:30 a.m. to 3:00 p.m. with a one-half hour lunch, thereby reducing her hours to 35 per week. Local 11 asserts that it rejected the proposal, and the Township then withdrew it. Local 11 states that on February 10, 2019, the Secretary resigned her union membership. Local 11 contends that Capristo's July 1, 2019 letter unilaterally changed the Secretary's schedule, thereby enacting that which Local 11

expressly rejected during negotiations. On July 17, 2019, Local 11 filed a Request for Submission of a Panel of Arbitrators. 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.

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. *Tp. of Clark and Union Council No. 8, IFPTE, AFL-CIO*, P.E.R.C. No. 2016-55, 42 *NJPER* 372 (¶105 2016), *aff'd*, 43 *NJPER* 147 (¶44 App. Div. 2016). Public employers have a managerial prerogative to determine the hours and days that a public service will be provided. *Oakland Public Library*, P.E.R.C. No. 2010-71, 36 *NJPER* 115 (¶48 2010). Work schedules of individual employees, however, are generally mandatorily negotiable. *Ibid.* See also *Local 195; 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); *Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n*, 81 *N.J.* 582, 589 (1980); *Englewood Bd. of Ed. v. Englewood Teachers Ass'n*, 64 *N.J.* 1, 6-7 (1973); *Burlington Cty. College Faculty Ass'n v. Burlington Cty. College*, 64 *N.J.* 10, 12, 14 (1973).

The Township argues that its request for a restraint of binding arbitration should be granted because arbitration of the grievance would impermissibly restrict its non-negotiable managerial prerogative to determine the most efficient manner in which to deploy employees. The Township asserts that the public interest in efficiently deploying its employees outweighs any individual employee interest, particularly where the employee has not been harmed by a pay reduction.

Local 11 argues that material changes to individuals' work schedules are mandatorily negotiable and that the Township has not articulated any policy-based need requiring that the change to the Secretary's schedule be implemented unilaterally rather than through negotiations. Local 11 further argues that the Township's unilateral change to the Secretary's schedule violated the CNA and the Township has not provided any valid justification for that violation; therefore, such a contractual violation is arbitrable.

Here, we decline to restrain arbitration of the grievance because the Township's unilateral change to the Secretary's schedule is mandatorily negotiable and legally arbitrable. Moreover, Local 11's argument that the Township violated the CNA by reducing the Secretary's hours and certain elements of the Township's position present issues of contractual interpretation that may be presented to an arbitrator.

The Township's reliance on Clark, supra, is misplaced and readily distinguishable from the present matter. In Clark, 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 because it believed that the public did not need physical access to the clerk in the evening. Rather than unilaterally changing the records clerk's salary, the Township deemed the record clerk's overtime unnecessary. As the Commission stated, "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." Moreover, in Oakland Public Library, supra, the employer articulated operational efficiency reasons and security and minimum staffing concerns that, on balance, outweighed the employee's interest in a preferred work schedule.

Here, unlike Clark or Oakland, the Township has not articulated and the record does not demonstrate any governmental policy consideration that overcomes the general mandatory negotiability of the Secretary's work schedule change. The sole reason provided by the Township for the Secretary's schedule change - the efficient deployment of its employees - can be the underlying justification for nearly every work schedule change,

yet the Commission has consistently held that changes to individual work schedules are generally mandatorily negotiable absent a showing that negotiation over the schedule change would substantially limit governmental policy determinations. The Township has not shown that arbitration would substantially limit its policy determinations. Thus, the Township's unilateral change to the Secretary's individual work schedule is mandatorily negotiable and legally arbitrable. The issues of contractual interpretation presented by the parties may be resolved by an arbitrator.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself.

ISSUED: March 26, 2020

Trenton, New Jersey