

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BERGEN,

Petitioner,

-and-

Docket No. SN-79-124

BERGEN COUNTY P.B.A. LOCAL 49,

Respondent.

SYNOPSIS

In an Interlocutory Decision the Special Assistant to the Chairman refuses to restrain and enjoin an interest arbitration proceeding concerning the scheduling of tours of duty for members of the Bergen County Police Department. He concludes that contract proposals relating to employees' work schedules, within the framework established by the employer as to how many employees would be on duty at a given time, was a required subject for collective negotiations.

The Special Assistant's decision relates solely to the County's request for a temporary stay of arbitration. The ultimate administrative decision on the merits of the dispute in the instant scope of negotiations proceeding still rests with the entire Commission.

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INTERLOCUTORY DECISION

This matter being opened to the Public Employment Relations Commission by Leon B. Savetsky, Esq., Attorney for the County of Bergen, and the undersigned designee of the Commission having read the duly verified petition for scope of negotiations determination and the letter memorandum annexed thereto, and having considered the oral arguments of the parties, it is hereby

ORDERED that the County of Bergen's request for an order restraining and enjoining arbitration involving the scheduling of tours of duty for members of the Bergen County Police Department be denied.

Previous Commission decisions have stated that the function of the undersigned in a request for an interim restraint of arbitration is limited to a determination as to whether there is any reasonable basis for the contention of a public employer that the matter in dispute may be found not to be within the scope of collective negotiations and therefore not arbitrable. In such circumstances, the requested order will issue.

The negotiability issue germane to the instant proceeding may be framed as follows: "are work schedules or tours of duty, within the framework established by an employer as to how many employees would be on duty at a given time, a mandatory subject of collective negotiations or a non-negotiable, non-arbitrable matter of governmental policy."

The undersigned concludes, after careful consideration of the test set forth in Dunellen Ed. Ass'n v. Dunellen Board of Education, 64 N.J. 17, 25 (1973) and reaffirmed in State v. State Supervisory Employees Assn, 78 N.J. 54 (1978) and Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), that the issue of work schedules within the framework established by an employer as to how many employees will be on duty at a given time, is a mandatory subject of collective negotiations.

The above-cited test defines mandatorily negotiable terms and conditions of employment as those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. The Commission in numerous decisions has considered the related group of issues concerning the matters of manpower requirements, work schedules, and time off. To summarize these decisions, the Commission has held that an employer has the right to unilaterally determine the

number of employees that must be on duty at any given time. However, the Commission has concluded that within the framework of these manning levels an employer must negotiate over such matters as which employees may be off duty, at what time, the amount of consecutive time they may be off, the method of selecting those employees to be off, what hours during the day employees work, and the schedules employees are required to work.^{1/} The Commission in these prior decisions has considered the arguments raised by the parties in the present case and applied the aforementioned Supreme Court negotiability standards and has consistently ruled that contractual provisions relating to tours of duty within the parameters set forth are mandatorily negotiable.

Although this is an interlocutory decision hurriedly drafted by the undersigned to accommodate the parties, the undersigned would like to briefly comment on certain additional issues raised in today's informal show cause proceeding.

First, as has been frequently indicated by the Commission and affirmed by the New Jersey Supreme Court in Ridgefield Park Board of Ed, supra, scope proceedings relate solely to the negotiability of the subject matter of the parties' dispute. Questions

^{1/} In re Town of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (14136 1978), In re Township of Cinnaminson, P.E.R.C. No. 79-5, 4 NJPER 310 (14156 1978), In re City of Northfield, P.E.R.C. No. 79-82, 4 NJPER 247 (14125 1978), In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER 251 (14127 1978), In re Borough of Roselle, P.E.R.C. No. 77-66, 3 NJPER 166 (1977), and In re City of Garfield, P.E.R.C. No. 79-16, 4 NJPER 457 (14207 1978).


relating to procedural or substantive arbitrability are not to be determined by the Commission in a scope proceeding. These are questions that are appropriate for determination by an arbitrator and/or the courts.

Secondly, it is questionable whether the Commission has the authority to issue temporary restraining orders in the interest arbitration context in light of N.J.A.C. 19:16-5.7(h). However, the undersigned is issuing this interlocutory decision to accommodate the stated preferences of both parties to this proceeding.

The undersigned further wishes to note that this decision relates solely to the County's request for a temporary stay of arbitration. The ultimate administrative decision on the merits of the dispute in the instant scope of negotiations proceeding still rests with the entire Commission.

In light of my determination concerning the negotiability issue in this matter, I have not dealt with the PBA's procedural arguments, e.g. that the instant scope of negotiations petition is untimely filed and dismissable pursuant to N.J.A.C. 19:16-5.5 (c). These procedural issues can be raised before the entire Commission.

BY ORDER OF THE COMMISSION



Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
May 29, 1979