

P.E.R.C. NO. 85-112

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLOSTER,

Petitioner,

-and-

Docket No. SN-84-53

P.B.A. LOCAL 233,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a motion filed by P.B.A. Local 233 to reconsider the Commission's decision in Borough of Closter, P.E.R.C. No. 85-86 11 NJPER (Para 1985) which restrained binding arbitration of the PBA's grievance challenging the implementation of a new work schedule. The motion sought a hearing to determine the negotiability of the work schedule change. The Commission holds that a hearing is not required in this case because there are no material factual issues in dispute.

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Appearances:

For the Petitioner, DeCotiis, Johnson & Pinto, Esqs.
(James A Farber, of Counsel)

For the Respondent, Loccke & Correia, Esqs.
(Richard D. Loccke, of Counsel)

DECISION ON MOTION FOR RECONSIDERATION

On February 14, 1984, the Borough of Closter ("Borough") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Borough sought a restraint of binding arbitration of a grievance which PBA Local 233 ("PBA") filed challenging the implementation of a new work schedule for patrol officers.

On February 25, 1985, the Commission granted the Borough's request for a restraint of binding arbitration. Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER ____ (Para. _____ 1985). We recognized the police officers' interest in retaining their existing hours of work, but concluded that:

The predominant concern of the instant grievance pertains to a non-negotiable managerial prerogative. It is undisputed that the three hour change in the starting and stopping times of the shift was made so that patrol officers'

shifts would conform with the superior officers' shifts. This change was deemed necessary for effective supervision and to enable the force to function effectively as a unit. Moreover, patrol officers were not required to work more hours, morning or evening shifts, weekends or days. Accordingly, we find that the change would significantly interfere and place substantial limitations on the determination of governmental policy and therefore cannot be submitted to binding arbitration.
[Slip opinion at 14.]

On March 20, 1985, the PBA, having received an extension of time, filed a Motion for Reconsideration. It seeks a hearing to determine whether the instant matter is mandatorily negotiable. It relies on that portion of our opinion requiring a balancing approach in determining the negotiability of work schedules (Slip opinion at 10). The Borough has filed a response opposing the PBA's motion.

A motion for reconsideration will only be granted "because of extraordinary circumstances." N.J.A.C. 19:13-3.11 and 19:14-8.4. Such circumstances do not exist here. We are satisfied that a hearing is not required in this case because there are no material factual issues. The PBA has contended that the change affects their personal lives and welfare. We fully agree. As we stated in the opinion:

In Local 195, the Court recognized that working hours fall within this category. Id. at 403. This especially holds true for police officers. They work under dangerous conditions. It is a tension filled job. They have a unique interest in the scheduling of their work and the amount of time off. No one can seriously dispute that. Indeed, the Borough does not contend otherwise.
[Slip opinion at 12].

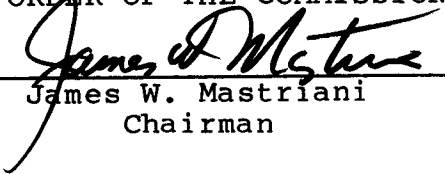
We held that the grievance could not be submitted to binding arbitration because undisputed facts concerning the employer's need

for a work schedule change established the non-arbitrability of that change under Appellate Division case law. Irvington Policemen's Benevolent Assn 29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979) certif. den. 82 N.J. 296 (1970). Given that the material facts are undisputed and given the Appellate Division caselaw, there is no need for a hearing.^{1/}

ORDER

The Motion for Reconsideration filed by PBA Local 233 is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted for this decision. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey
April 25, 1985
ISSUED: April 26, 1985

^{1/} Further, parties desiring an evidentiary hearing concerning a scope of negotiations determination are required to file "such request...no later than five days from the receipt of respondent's initial brief. N.J.A.C. 19:13-3.6. Respondent did not file such a request. Our rules specifically provide that "failure to file a timely request for evidentiary hearing shall constitute a waiver of any right to such hearing." Id.