

P.E.R.C. NO. 99-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-98-100

WOODBRIDGE TOWNSHIP POLICE
DEPARTMENT SUPERVISING OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Woodbridge for a restraint of binding arbitration of a grievance filed by the Woodbridge Township Police Department Supervising Officers Association. The grievance alleges that the Township violated the parties' collective negotiations agreement when it changed the assignment and work schedule of a captain. The Commission concludes, under all of the circumstances, that the decision to reassign a captain to different duties and a different work schedule is non-negotiable. The Township has a prerogative to determine that its concerns about crime, misconduct, and citizen complaints warrant a command presence and enhanced supervision at night and on weekends.

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, Genova, Burns & Vernoia, attorneys
(James J. McGovern III, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, P.C., attorneys
(James M. Mets, on the brief)

DECISION

On June 17, 1998, the Township of Woodbridge petitioned for a scope of negotiations determination. The petition seeks a restraint of binding arbitration of a grievance filed by the Woodbridge Township Police Department Supervising Officers Association. The grievance alleges that the Township violated the parties' collective negotiations agreement when it changed the assignment and work schedule of Captain Robert Elwood.

The parties have filed briefs, exhibits and certifications. These facts appear.

The Association represents the Township's police sergeants, lieutenants and captains. The Township and the

Association are parties to a collective negotiations agreement effective from January 1, 1996 through December 31, 1998. The grievance procedure ends in binding arbitration.

Article XXXVI is entitled General Order Regarding Scheduling #116. It provides, in part:

Manning and Shift Selection

The number of Officers on any shift will be determined by current Departmental Rules, Regulations, Procedures and by Departmental needs and current crime statistics for those time periods.

Each member will select his/her steady shift based on the current Departmental Seniority List as it pertains in his/her Division. Each year, following the year of the adopting of the steady shift, on or about the first week in January, each member will be given the right to bid on a new shift or remain on the same shift. Shift selection will begin on November 1st and finalize on November 14th of that year and be posted upon completion. Shift selection will be based on current Departmental Seniority List. New shift selections will be effective in the middle of the first shift after January 1st of the next year.

* * *

Advertising and Bidding for Vacancies on Shifts

* * *

All vacancies on any shift created by on-the-job injuries or sick leave which last for one (1) calendar year or more, which occur after finalization of the yearly seniority bid selections will be advertised and [bid] as described.

Any member who returns to active duty from sick leave or an on-the-job injury which has lasted for one (1) calendar year or more, or any time less than one (1) year, will be returned to the

shift from which he left, until October 1st of that year.

There are five divisions in the police department: (1) radio patrol, (2) operations and planning, (3) criminal investigations, (4) administrative and communications, and (5) data processing. One captain is assigned to each division. Each captain spends two years in each division and is then rotated to another division to allow cross-training. This practice has been in effect since 1991.

Captain Robert Elwood went on a disability leave in April 1997. At the time, he was assigned to the operations and planning division. Because of the length of Elwood's leave, Captain Burns was reassigned to this division.

It is unclear whether Elwood returned to work in February 1998, as indicated by the Township's brief, or in April 1998, as indicated by the Association's brief and Elwood's certification. At the time of his return, however, each captain had been working in his division for at least one year and the Township did not want to disrupt operations by replacing another supervising captain in the middle of a rotation. Elwood was thus assigned to the administrative division where he was made supervisor of the staff inspectional unit.^{1/}

^{1/} This supervising position is comparable in salary, duties and authority to the other supervising positions.

The staff inspectional unit was created in February 1998. Before this unit was created, night and weekend shifts were overseen solely by line supervisors (squad sergeants, or a lieutenant as shift commander) rather than command or staff supervisors. The mayor and the police chief believed that a command presence was needed on these shifts given increased crime, citizen complaints, and misconduct. The new unit was created to provide a command presence on night and weekend shifts and to oversee the accreditation process described in the next paragraph.

In the accreditation process, a national committee -- the Commission on Accreditation for Law Enforcement Agencies -- reviews departmental performance against several hundred criteria. Initial accreditation takes three years and requires enormous hours of preparation to satisfy the criteria. Accreditation is not required, but usually results in reduced insurance premiums and fewer civilian complaints. The accreditation process can also be an impetus to revise operating policies and procedures to bring a department to full operational capacity.

The accreditation process apparently began while Elwood was on leave. Three officers were assigned to the accreditation unit -- one lieutenant, one sergeant, and one patrol officer. They were assigned to the 7:30 a.m. - 4:45 p.m. shift and reported to the captain in the operations and planning division. Currently, three full-time police officers, two part-time officers, and Elwood are assigned to work on the accreditation process.

Before his leave, Elwood worked from Monday through Thursday, 7:30 a.m. to 4:45 p.m. On February 23, 1998, his schedule was changed to Sunday through Wednesday, 3:00 p.m. to 12:15 a.m.^{2/} A memorandum from the police chief explained the reasons for the change and Elwood's new duties:

In preparation for the upcoming accreditation on site inspection and to effectuate an orderly transition into the process the following assignments take place:

Captain Robert Elwood and Lieutenant Joseph Maklary who are assigned to the Office of the Deputy Chief will be responsible for assisting the shift commanders regarding the below listed activities.

- a. observation of personnel as defined within the standards.
- b. facility and equipment staff inspections, as well as line inspections;
- c. ensure that reports [are completed] and remedial action is taken to correct any deficiencies that may be found;
- d. ensure that reports and recommendations for noted deficiencies (that cannot be immediately corrected) are completed and forwarded to the Office of the Chief of Police;
- e. evening and weekend Public Information Officer (press releases for routine incidents);

^{2/} In the past, captains had been assigned to the day shift. In 1996, at the mayor's request, all captains were required on a rotating basis to staff the night shift for one tour per week. The Association did not grieve that schedule change. The assignments were stopped after one year.

- f. to provide answers for questions which may arise regarding standards and to ensure compliance with same;
- g. provide a command presence of the Office of the Chief of Police
- h. assist the Accreditation Office with its functions and;
- i. other such duties which may be assigned by the Chief of Police

Elwood has submitted a certification contesting the reasons given for the change and his new duties. He states that he has no experience with the accreditation process and was not advised what his role would be; he cannot inspect departments, bureaus and divisions because those offices close at 4:30 p.m.; he has not participated in any discussions with the accreditation team because the other members work on the day shift and go off duty when he comes on; the only information he receives about accreditation is through departmental handouts; certain functions do not apply to his position and are normally performed by the tour lieutenant on the night shift -- e.g. observation of personnel; and while he is the ranking officer on the night shift, he is not in the chain of command since officers on that shift report to their shift commander (lieutenants or squad sergeant).

The Association has also submitted a certification of its president, a lieutenant in the department. He asserts that supervisory responsibilities on the night shift have traditionally been assigned to lieutenants and sergeants; he is a shift

commander on the 2:45 p.m. to 1:00 a.m. shift; and the duties described in the chief's memorandum fall within the shift commander's function.

The Township has submitted certifications of the chief, deputy chief and Captain Charles Rowinski; the job description of a captain; internal affairs reports; and crime report statistics for each shift. The police chief asserts that Elwood was given one month to familiarize himself with accreditation standards and can discuss accreditation concerns at the beginning of his shift each day. The deputy chief asserts that Elwood inspects and has inspected departmental bureaus and divisions at the beginning of his shift and that the chief and deputy chief have been available to discuss his inspections. He also asserts, as does Captain Rowinski, that the observation of personnel and the review of reports are duties assigned to captains on the day shift and to any night shift captains as well and that Elwood is responsible for providing the command presence on the night shift.

On February 27, 1998, Elwood filed a grievance. He asserted that his new work schedule differed from his pre-leave work schedule and thus violated Article XXXVI.

After the police chief denied the grievance, the Association demanded arbitration. The demand identified the

grievance as a schedule change in violation of Article XXXVI.
This petition ensued.^{3/}

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 this grievance or any contractual defenses the parties may have.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Paterson PBA No. 1 v. Paterson, 87 N.J. 78 (1981 with Local 195, IFPTE v. State, 88 N.J. 393 (1982)). The Court in Paterson set forth these negotiability tests:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the

^{3/} The Association has requested an evidentiary hearing pursuant to N.J.A.C. 19:13-3.6. We deny this request. Any factual dispute appears to be limited to the efficacy of Elwood's role in the accreditation process given his new work hours. Even if we accept Elwood's assertions, a different result would not be warranted.

parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983).

Consistent with Local 195 and In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987), we have recognized that work schedules are generally negotiable in the abstract. However, we have also recognized that a particular work schedule issue involving police officers may not be mandatorily negotiable or legally arbitrable if the facts demonstrate a significant interference with governmental policy. See, e.g., Town of


Irvington v. Irvington PBA, Local No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif den. 82 N.J. 296 (1980) (need for supervision and improved discipline on night shift made shift change non-negotiable); City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997) (need for command presence of deputy chief and captain on summer weekends made work schedule change non-negotiable). Our Supreme Court has recently stressed the broad discretion accorded public entities and officials in administering police departments and making assignments for operational reasons aimed at reducing crime. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 572-573 (1998).

Under all the circumstances in this case, we hold that the Township's decision to reassign a captain to different duties and a different work schedule was non-negotiable. The Township has a prerogative to determine that its concerns about crime, misconduct, and citizen complaints warrant a command presence and enhanced supervision at night and on weekends. Irvington; North Wildwood. And we will not second-guess its decision to assign accreditation process responsibilities to a captain. We are satisfied that prohibiting the Township from assigning a captain to the disputed duties would significantly interfere with its policymaking prerogatives. Accordingly, we will restrain arbitration.

ORDER

The request of Woodbridge Township for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: March 25, 1999
Trenton, New Jersey
ISSUED: March 26, 1999