P.E.R.C. NO. 93-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY BOARD OF
CHOSEN FREEHOLDERS,

Petitioner,

-and- Docket No. SN-93-46

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 1085,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Communications Workers of America, Local 1085 against the Gloucester County Board of Chosen Freeholders. The grievance asserts that the County violated a contractual provision governing work hours when it hired a part-time nurse to work in a full-time title. The Commission finds that this dispute predominately involves the mandatorily negotiable subject of work hours and is legally arbitrable.

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Appearances:

For the Petitioner, Gerald L. Dorf, P.C., attorneys
(John C. Scannell, on the brief)

For the Respondent, Steven P. Weissman, attorney

DECISION AND ORDER

On December 10, 1992, the County of Gloucester petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1085 ("CWA"). That grievance asserts that the County violated a contractual provision governing work hours when it hired a part-time nurse to work in a full-time title.

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

CWA represents County employees who work 15 hours per week or more in the blue and white collar, supervisory, mosquito control and row office bargaining units. CWA and the County, County Clerk, Surrogate, and Sheriff entered into a collective negotiations agreement effective from January 1, 1992 to December 31, 1994. The grievance procedure ends in binding arbitration of contractual disputes.

During 1991, the County employed five licensed practical nurses at the prison. Each nurse worked on a full-time basis. Four nurses worked 40 hours a week, consisting of eight hour shifts on weekdays. The fifth nurse, Earl Rider, worked only on weekends, from eight a.m. to midnight each day.

Rider suffered an injury requiring a medical leave of absence. None of the four nurses wanted to work his weekend schedule, so the parties negotiated a new schedule calling for an 8:00 a.m. to 4:00 p.m. shift and a 3:00 p.m. to 11:00 p.m. shift on Saturdays and Sundays. After recovering, Rider quit because he did not like the new weekend work schedule.

The undersheriff decided that additional nursing coverage was needed on "doctor days" -- (usually Mondays, Wednesdays, and Thursdays) when a doctor or dentist is available to the inmates. Moira Connell was hired as a part-time nurse. She works 15 hours a week. The undersheriff's certification states that there was not enough work to hire another full-time nurse.

On December 9, 1991, CWA filed a grievance. It asserted that by hiring a part-time nurse in a full-time title, the Sheriff had violated Article V, Section 1 of the parties' collective negotiations agreement. Article V is entitled Hours of Work and Paydays. Section 1 provides:

> The current hours of work, including meal and break times, shall be maintained. In cases where there is more than one shift for employees in a given title, seniority shall be a consideration in assignment or reassignment of employees to a shift. Full-time workweeks shall be as follows, depending upon department and/or job classification:
>
> (a) 32.5 hours, Monday through Friday;
> (b) 35 hours, Monday through Friday;
> (c) 40 hours, Monday through Friday;
> (d) 40 hours, five days per week, including scheduled weekends;
> (e) Irregular (40-hour average), including scheduled weekends.1/

The grievance asked that Connell be changed to a full-time employee. It was denied.

On April 26, 1992, CWA demanded binding arbitration. 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

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1/ Section 2 provides that part-time salaried employees covered by the agreement shall be assigned to work a portion of the standard full-time workweek, and employees in hourly positions covered by the agreement shall be assigned to work at least 15 or 20 hours per week on average.

> 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 cannot consider the contractual merits of this grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets forth the standards for determining whether a dispute is mandatorily negotiable and hence legally arbitrable. It states:

> [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. [Id. at 404-405]

CWA asserts that it has negotiated a 40 hour work week for employees occupying the negotiations unit position of licensed practical nurse and that the employer has unilaterally reduced the work hours of that unit position by having one nurse work only 15

hours a week.[2/] We cannot consider the contractual merits of that claim, but we do believe that it addresses a mandatorily negotiable subject. Our Supreme Court has consistently held that work hours are a mandatorily negotiable term and condition of employment. See Local 195; Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 18 (1978); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). Thus, short of abolishing a position, an employer must negotiate over reductions in the work year, work week, and work day of unit positions. See, e.g., Galloway; In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978); Bor. of Belmar, P.E.R.C. No. 89-73, 15 NJPER 73 (¶20029 1988); Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988); New Jersey Sports & Expo. Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd App. Div. Dkt. No. A-4781-86T8 (5/25/88); Cherry Hill Bd. of Ed., P.E.R.C. No. 85-68, 11 NJPER 44 (¶16024 1984); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983). In an unfair practice case involving these parties, we stated that CWA's claim that Article V, Section 1 requires that full-time hours be maintained for particular positions should be resolved through the negotiated grievance procedures. Gloucester Cty., P.E.R.C. No. 92-83, 18 NJPER 99, 100, n.2 (¶23045 1992).

2/ CWA notes that the County had at least three options after the fifth nurse resigned: (1) it could have replaced that nurse by hiring another full-time nurse; (2) it could have scheduled the other four nurses to work overtime, and (3) it could have contracted with a temporary employment agency to provide weekend coverage.

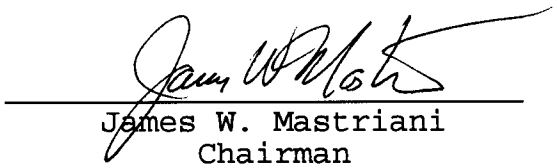
The County relies upon Hunterdon Cty., P.E.R.C. No. 83-46, 8 NJPER 607 (¶13287 1982), where we held not mandatorily negotiable a proposal to change the classification of sheriff's officers from part-time to full-time and where we stated that the employer had a prerogative to determine the number of part-time and full-time employees. But Hunterdon did not involve a contractual provision addressing the work hours of negotiations unit positions nor did it discuss the precedents holding that work hours are mandatorily negotiable. Instead, Hunterdon relied on Paterson PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), which held that a public employer has a prerogative not to fill a vacant position. That proposition coincides with the employer's right to abolish a position, a right recognized by the cases prohibiting unilateral reductions in work hours short of abolishing a position. But neither Paterson nor Hunterdon authorizes an employer to reduce the work hours of unit positions unilaterally.

On balance, we hold that this dispute predominantly involves the mandatorily negotiable subject of work hours and is legally arbitrable. We will not speculate upon what remedy might be appropriate if an arbitrator finds a violation. Deptford Bd. of Ed., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981).

ORDER

The request of the Gloucester County Board of Chosen Freeholders for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Grandrimo was not present.

DATED: April 29, 1993
Trenton, New Jersey
ISSUED: April 30, 1993