

P.E.R.C. NO. 78-84

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IRVINGTON POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL #29,

Petitioner,

Docket No. SN-78-37

-and-

TOWN OF IRVINGTON,

Respondent.

SYNOPSIS

The Commission determines that what hours or schedules employees are required to work is a required subject of negotiations. However, these negotiations must take place within the framework established by the public employers as to how many employees are on duty at any given time. In this case, the employer seeks to change the shift assignments or hours of work of employees but there is to be no change in the number of employees on duty at any time. Therefore, the employer is required to negotiate any change in shift assignments and to submit any unresolved dispute regarding this matter to compulsory interest arbitration in accordance with the Commission's rules.

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Appearances:

For the Petitioner, Zazzali, Zazzali & Whipple, Esqs.  
(Lawrence A. Whipple, Jr., of Counsel)

For the Respondent, Jacob Green, Esq.

DECISION AND ORDER

The Irvington Policemen's Benevolent Association, Local #29 (the "P.B.A.") filed a petition with the Public Employment Relations Commission on May 5, 1978 seeking a determination as to whether a matter in dispute between the P.B.A. and the Town of Irvington (the "Town") is within the scope of collective negotiations.

The dispute arose during the course of negotiations between the parties for a successor agreement to their 1976-1977 contract. A petition for compulsory interest arbitration, IA-78-12, also has been filed with the Commission pursuant to P.L. 1977, c. 85. We observe that, in the absence of a mutual agreement, the Police and Fire Arbitration Act precludes the submission to an arbitrator of subjects that are not within the

required scope of collective negotiations. N.J.S.A. 34:13A-16(f)  
4. <sup>1/</sup> Additionally, an unfair practice charge, Docket No. CO-78-249, was filed with the Commission on April 18, 1978 by the P.B.A. In this scope proceeding, we are only concerned with the abstract issue of the negotiability of the disputed subject. We will not consider questions of waiver and various other issues which can be addressed in the unfair practice proceeding.

The P.B.A.'s brief in support of the petition was filed simultaneously with the petition. The Town submitted a brief statement of its position in a letter dated May 23, 1978 and submitted a full brief on June 22, 1978. The essential facts are not contested.

The dispute concerns shift assignments. Until April 18, 1978 when the Town implemented a rotating shift schedule for all police officers in the Patrol Division, the employees in this division worked as follows: approximately one third of the employees worked the midnight shift on a steady, nonrotating basis. The other officers worked alternating shifts: two weeks on the morning shift followed by two weeks on the afternoon shift, etc.

The Town seeks to change shift assignments so that all officers in the Patrol Division work on full rotating around the clock shifts: two weeks on the morning shift, two weeks on the midnight shift, and two weeks on the afternoon shift, etc.

The question before us is whether the public employer's decision to change shift assignments as described above is a

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<sup>1/</sup> That section provides that "Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation."

required subject of negotiation.<sup>2/</sup>

The Town contends that a change of shift assignments is not a required subject of collective negotiations. It argues that its decision to change shift assignments is based upon the requirement to render more efficient and effective service.<sup>3/</sup> Distinguishing the public sector where the decision relates to the police function from the private sector where such decisions are primarily economically motivated, the Town urges that the balance in this case falls on the side of the Town to change shift assignments. It also cites cases involving the War Labor Board which held that scheduling decisions need not be negotiated. The Town argues that these cases more nearly duplicate the context of the public sector than do the cases cited by the P.B.A. It states its position that the Police and Fire Arbitration Act was not intended to place in the hands of a third party neutral areas of such vital concern to the effective operation of a police department.

The P.B.A., on the other hand, citing private sector as well as New Jersey judicial and administrative decisions, contends that a work schedule is a required subject of negotiations. It

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<sup>2/</sup> The P.B.A.'s petition also asks whether a public employer may implement such a work schedule prior to the completion of arbitration proceedings. That question is beyond the purview of the instant proceeding. As stated above, the P.B.A. also filed an unfair practice charge concerning this matter.

<sup>3/</sup> As an example, the Town claims that this will be better discipline if the police officers all work rotating shifts because the superior officers already work rotating shifts and the Town believes that superior officers will have better control if they supervise the same employees on a regular basis.

contends that shift assignment is a working condition which should be a required subject of negotiations.<sup>4/</sup>

In several other cases decided simultaneously herewith,<sup>5/</sup> we have considered, in the context of police and fire departments which are subject to the Police and Fire Arbitration Act, the negotiability of several somewhat related matters relating to mandatory roll call, scheduling of vacations and other time off, and work schedules. We have attempted to consider the various implications of these issues in order to develop a comprehensive and consistent framework for the analysis of these issues. We are fully aware of their significance to both public employees and public employers and we believe that our decisions are consonant with the legitimate interests of both as well as the legislative intent as enunciated in the Act.

Having considered the arguments of the parties with respect to the negotiability of changes in shift assignments,<sup>6/</sup>

<sup>4/</sup> N.J.S.A. 34:13A-5.3 provides in part that, "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designaged representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

<sup>5/</sup> In re Township of Northfield, P.E.R.C. No. 78- , 4 NJPER ( 1978); In re Township of Maplewood, P.E.R.C. No. 78- , 4 NJPER ( 1978); In re Township of Maplewood, P.E.R.C. No. 78- , 4 NJPER ( 1978); and In re Township of West Orange, P.E.R.C. No. 78- , 4 NJPER ( 1978).

<sup>6/</sup> The Town views this dispute as centering on scheduling of work. But we do not believe that the cases cited by the Town are analogous. This case, as stated below, does not involve changes in the numbers of employees on duty at any time.

we find that our analysis in In re Township of Northfield, supra, is applicable. In Northfield, we held that 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 of negotiations. Similarly here we determine that what shifts or hours employees work is also a required subject of negotiations.

Where the present case differs from the situation in Northfield is that in Northfield the employer desired to change the number of employees on duty at a certain time, the night shift, whereas here the employer seeks only to alter the hours of work of individuals but not the total number of employees on duty at any given time. Apparently here the number of employees on duty at all times will remain the same.

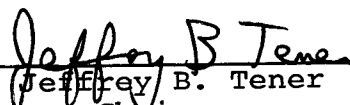
As in Northfield, the employer must negotiate with the P.B.A. regarding any changes in shift assignments. Of course, as we said in Northfield, if the employer had made a managerial decision to redeploy its police officers to result in greater coverage during high crime times or for other reasons, that decision would not be negotiable and the P.B.A. would have to negotiate regarding shift assignments and work schedules within the framework of those times and levels that the employer had determined to provide various police service. But that is not the situation in the instant matter. Negotiations on shift assignments or hours of work in this context will not affect the Town's ability to determine the number of employees on duty at a given time and, therefore, these proposals are mandatorily negotiable.

Much of the Town's brief focuses on the reasons for desiring rotating shifts and to the wisdom of agreeing to the P.B.A.'s proposal. By ordering negotiations, we are not ordering the Town to abandon its position or to agree with the P.B.A.'s position. These arguments can also be addressed to the arbitrator assuming that the parties fail to reach an agreement through direct negotiations.

ORDER

Based upon the above discussion and our determination that the issue of shift assignment constitutes a required subject of negotiations, IT IS HEREBY ORDERED that the Town of Irvington negotiate in good faith with Irvington Policemen's Benevolent Association, Local #29 regarding shift assignment and submit to compulsory interest arbitration any unresolved dispute regarding this issue in accordance with the Act and the Commission's Rules.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels voted for this decision. None opposed. Commissioners Schwartz abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey  
June 30, 1978  
ISSUED: July 5, 1978