

P.E.R.C. NO. 97-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH PLAINFIELD,

Petitioner,

-and-

Docket No. SN-96-102

IAFF LOCAL 2958,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies, in part, the request of the Borough of North Plainfield for a restraint of binding arbitration of a grievance filed by IAFF Local 2958. The grievance asserts that a fire department directive concerning duty tour exchanges violates the parties' collective negotiations agreement. The restraint is denied only to the extent the grievance contests a policy requiring notice, before the first half of a shift swap occurs, of the date the exchange will be completed.

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.

P.E.R.C. NO. 97-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH PLAINFIELD,

Petitioner,

-and-

Docket No. SN-96-102

IAFF LOCAL 2958,

Respondent.

Appearances:

For the Petitioner, Genova, Burns, Trimboli & Vernoia,
attorneys (Stephen E. Trimboli, of counsel)

For the Respondent, Fox & Fox, attorneys (David I. Fox, of
counsel; Stacey B. Rosenberg, on the brief)

DECISION AND ORDER

On March 14, 1996, the Borough of North Plainfield petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by IAFF Local 2958. The grievance asserts that a fire department directive concerning duty tour exchanges violates the parties' collective negotiations agreement.

The parties have filed briefs and documents. These facts appear.

The IAFF represents the Borough's non-supervisory firefighters. The parties have entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1996 which has a grievance procedure ending in binding arbitration. Article X, Leaves of Absence, states, in part:

Section 1. Exchange of Duty

A Firefighter may, with the approval of the Chief, be granted an exchange of duty with pay for any days on which he is able to secure another Firefighter to work in his place. Each exchange of duty request must be submitted for approval to the Chief or his designee no later than seventy-two (72) hours in advance. However, short notice requests will be considered on a case by case basis. Anything to the contrary contained herein notwithstanding, when there is a three (3) day holiday/weekend and the requested day off is the day immediately following the holiday/weekend, the request must be filed no later than 12:00 noon on the day preceding the holiday/weekend. Exchanges in any calendar year must be completed by January 31st of the immediately following calendar year.

A department policy pertaining to tour exchanges was adopted in 1991 and amended on October 26, 1995. The pertinent parts, with the 1995 amendments underlined, state:

- 1.1 This directive is issued to provide guidelines regarding absence from duty with allowances that are consistent with the Borough's Codes, Ordinances, and the Fire Department's existing Rules and Regulations.
- 1.2 For the purpose of this order, an Exchange of Duty and Early Exchange shall mean the replacement or standby of one member for another without compensation.
- 2.1 Early Exchange Leave - shall be defined in this administrative policy as an early relief from duty by another member without the required prior notice to the administration.
- 2.2 Exchange of Duty Leave - shall be defined as a pre-approved direct exchange of scheduled working tours between two members of this department.
- 3.3 Exchange of Duty requests shall be submitted in writing to the Operations Officer listing

the day and time requested, no less than 72 hours prior to the requested date and time of the exchange.

a. Any 3-day holiday weekend occurring; (official Borough Holiday on Monday) the request must be filed no later than 12:00 noon on the day preceding the holiday/ weekend.

3.4 Administrative approval for exchange of duty shall be the responsibility of the Operations Officer.

4.1 Any member exchanging duty with another must be able and capable to perform the work of the individual he is exchanging with.

4.2 Probationary members may only request an Exchange of Duty, or Early Exchange, with other probationary members.

4.3 Officers may perform an Exchange of Duty with Officers or working Acting Officers.

4.4 The exchange of duty shall must be completed by January 31 of the immediately following calendar year.

4.5 Early Exchange for acting officers shall be allowed providing there is no additional compensation generated as a result of the early exchange.

4.6 Requests for exchanges of duty will not be approved when the exchange creates a continuous tour exceeding the normal hours of work; either 10 to 14 hour tours. Example: an exchange of duty that creates a double shift of 24 hours straight, will not be approved as a firefighter safety issue.

5.1 All requests for exchange of duty shall include the name of the member with whom the exchange is occurring and when the second half of the exchange is to occur.

The Borough's firefighters work a "10-14" schedule providing for two days of 10 hour day shifts (8 a.m. to 6 p.m.),

followed by 72 hours off, followed by two days of 14-hour night shifts (6 p.m. to 8 a.m.). In June 1995, the fire chief began requiring firefighters who requested duty exchanges to identify when the second half of the exchange would be completed. This condition was later memorialized as an amendment to section 5.1 of the tour exchange policy.

On June 22, 1995, the IAFF filed a grievance asserting that the new requirement violated the agreement. The Borough denied the grievance and the IAFF demanded arbitration. This petition ensued.^{1/}

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus we do not consider the contractual merits of the grievance or any contractual defenses the employer may have. Nor do we consider the merits of the unfair practice charge.

^{1/} The IAFF has also filed an unfair practice charge.

According to his certification, the chief imposed the requirement that the completion date of the tour exchange be identified to aid the operations officer, who had been having difficulty keeping track of when exchanges were completed because of the high number of such "swaps."^{2/} According to the chief, identifying when the second part of the exchange will be completed allows the operations officer to determine whether the exchange was later completed. Other reasons identified by the chief for the policy included the ability to prevent an excessive number of exchanges being completed just before the January 31 deadline, to hold down overtime costs by insuring that completion of a tour of duty exchange would not result in a firefighter exceeding maximum hours per week limitations imposed by the Fair Labor Standards Act, and to facilitate scheduling and deployment.

A certification by IAFF negotiating committee member Stephen Vreeland states that since the policy was altered, it has been considerably more difficult for firefighters to find a fellow officer who can accommodate a request for a tour exchange as a firefighter agreeing to the swap may not know when he will want the swap completed. Under the former policy, a firefighter could use the exchange to accommodate some personal need which could not be immediately calendared, e.g., birth of a child, death of a relative.

^{2/} The department has 22 firefighters. The chief stated that 137 exchanges occurred in 1994 and 161 in 1995.

The chief's affidavit did not address any "safety" issue. Vreeland asserts that prior to the new policy, a firefighter working a day shift would readily agree to a swap with the firefighter coming on the night shift. He asserts that the policy has been in effect for 20 years and has had no adverse safety impact. He also notes that the contract allows firefighters completing a day shift to be called in during the night shift to handle emergencies and that several neighboring communities have adopted and safely operate 24 hour shifts as their normal work schedule. He asserts that the new limitation now means that a day shift must be exchanged for a day shift only and a night shift for a night shift only. The IAFF asserts that the effect of these changes has been to severely restrict the availability of the tour swap as a contractual benefit.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and firefighters:

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

When a negotiability dispute involving police officers or firefighters arises over 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 13 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

Proposals permitting voluntary shift exchanges conditioned on the employer's prior approval are mandatorily negotiable. See City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990); Borough of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988); Teaneck Tp., P.E.R.C. No. 85-51, 10 NJPER 644 (¶15309 1984); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981). Compare Teaneck Tp., P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310 1984) (holding non-mandatorily negotiable a proposal which would require only prior

notice, rather than prior approval, of voluntary shift exchanges). The parties' contract and the policy expressly condition tour exchanges on prior approval of the chief or a designee.^{3/}

The Borough asserts that the grievance challenges only that aspect of the policy which requires notice of the date the exchange will be completed, and does not involve the amendment to section 4.6 banning exchanges which would result in a firefighter working 24 hours continuously. It has limited its scope arguments to the first issue and we will not address the negotiability or arbitrability of the second. Nor will we address whether the grievance challenges the adoption of section 4.6, whether the grievance can be amended to include that challenge, or the resolution of any other contractual or procedural arbitrability questions that are beyond our limited jurisdiction. Ridgefield Park. See Rutherford Borough, P.E.R.C. No. 97-47, ___ NJPER ___ (¶_____ 1996); Neptune Bd. of Ed., P.E.R.C. No. 93-36, 19 NJPER 2 (¶24001 1992); City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988).

As to the first issue, the Borough analogizes this case to those in which an employee has been required to verify that personal leave is being used for the purposes set forth in the agreement. It relies on Barnegat Tp. Bd. of Ed., P.E.R.C. No. 84-123, 10 NJPER 269 (¶15133 1984). We disagree. There is no allegation that employees

^{3/} The IAFF's brief appended a 1994 grievance arbitration award in which the arbitrator upheld the chief's denial of a tour exchange, despite his having approved 457 of 459 of such requests over the preceding five years.

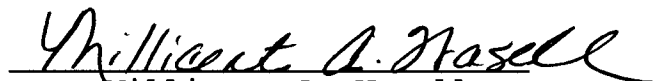
are using tour exchanges improperly or that the second half of the exchanges are not being completed. Thus, no verification issue is present.

Employees have an intimate and direct interest in the procedures for implementing a duty tour exchange policy and in not having a requirement that could make it more difficult for a firefighter to pair up with a colleague who is willing to exchange shifts. The employer's stated concerns involve keeping track of exchanges, scheduling and overtime liability. We appreciate those interests, but they are not central to governmental policy and do not outweigh the employees' interests in being able to exchange shifts subject to the chief's approval. Accordingly, we decline to restrain binding arbitration over this issue.

ORDER

The request of the Borough of North Plainfield for a restraint of binding arbitration is denied to the extent the grievance contests a policy requiring notice, before the first half of a shift swap occurs, of the date the exchange will be completed.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

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

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996