

P.E.R.C. NO. 86-96

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-86-9

F.O.P. LODGE NO. 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies F.O.P. Lodge No. 12's motion for reconsideration and stay of a previous scope of negotiations determination. The Commission finds no extraordinary circumstances for granting the F.O.P.'s request.

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Appearances:

For the Petitioner, Rosalind Lubetsky Bressler, Corporation Counsel (Lucille LaCosta-Davino, Assistant Corporation Counsel, Of Counsel and On the Brief).

For the Respondent, Stephen C. Richman, Esq.

DECISION AND ORDER ON MOTION FOR  
RECONSIDERATION AND STAY

On November 19, 1985, the Public Employment Relations Commission restrained binding arbitration of a grievance F.O.P. Lodge No. 12 ("FOP") had filed against the City of Newark ("City"). P.E.R.C. No. 86-71, \_\_\_ NJPER \_\_\_ (¶ \_\_\_ 1985). The grievance alleged that the City's proposed change in police shifts and work schedules would violate the parties' agreement. We held, applying the Appellate Division decisions of Bor. of Atlantic Highlands and Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984); and Town of Irvington v. Irvington PBA Local #29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) and our decision in Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985), that the

change in work hours and shift changes was prompted by significant governmental policy interests and therefore was not arbitrable. We further held, however, that severable issues, such as overtime payments and shift differentials, were mandatory subjects for negotiations and therefore "a demand for negotiation and arbitration on these severable issues could be made by the FOP." Slip opinion at 8.

On December 5, 1985, the FOP moved for reconsideration of our order restraining arbitration of its grievance. The FOP filed supplemental letters on December 26 and 27, 1985. It contends that the decision "fails to consider the effect of the City's refusal to provide the FOP with relevant information concerning the need for a change in schedules" and refers to a pending unfair practice charge filed by the FOP concerning the City's alleged refusal to supply such information. The FOP also seeks clarification of that portion of the Commission's order that the severable issues were mandatorily negotiable. It contends the decision should be clarified to state when negotiations and arbitration on the severable issues should occur -- either now or at the contract's expiration; -- what form arbitration should take; and what the arbitrator's authority should be.

The FOP has also sought a stay of the implementation of the shift changes.

On January 6 and 10, 1986, the City filed its responses opposing a stay and reconsideration.

We deny reconsideration because the requisite "extraordinary circumstances" do not exist. N.J.A.C. 19:14-8.4. We are obliged to follow applicable Appellate Division precedent. We did so in this case.

We also see no need to clarify our order. In a scope of negotiations determination our jurisdiction is limited. As our Supreme Court stated in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975):

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.

Accordingly, our decision held that the severable issues were mandatorily negotiable in the abstract. The question of contractual arbitrability is for an arbitrator or a court to resolve. The question of whether the City has refused to negotiate is subject to our jurisdiction over unfair practices.

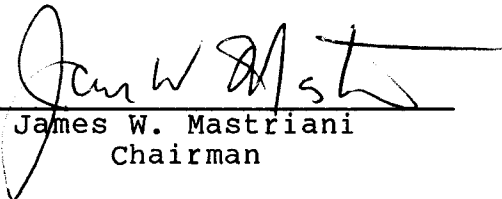
Finally, we deny the FOP's request for a stay of the proposed change in police shifts and work schedules. Such a request appears to be predicated on the FOP's belief that the shift change is mandatorily negotiable as well as the City's alleged failure to

supply relevant information. First, we have held that this change is not mandatorily negotiable. Secondly, the alleged failure to supply information is the subject of a related unfair practice proceeding. Conversely, it was not the subject of our scope of negotiations determination. Our previous decision held only that the FOP could not submit its grievance concerning the tour change to binding arbitration. It did not address the failure to supply information issue which is, at this juncture, appropriately before the Director of Unfair Practices.

ORDER

The request for reconsideration and stay are denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Smith and Wenzler voted in favor of this decision.  
Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey  
February 19, 1986  
ISSUED: February 20, 1986