

P.E.R.C. NO. 92-129

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF UNION BEACH,

Petitioner,

-and-

Docket No. SN-92-68

PBA LOCAL 291,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that PBA Local 291's proposal that officers work steady shifts of ten hours a day, four days a week is mandatorily negotiable and may be submitted to interest arbitration.

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Appearances:

For the Petitioner, Thaler & Locascio
(Robert B. Thaler, of counsel)

For the Respondent, Rudnick, Addonizio & Pappa
(Thomas M. Comer, of counsel)

DECISION AND ORDER

On January 9, 1992, the Borough of Union Beach petitioned for a scope of negotiations determination. The Borough seeks a declaration that a work schedule proposal which PBA Local 291 seeks to submit to interest arbitration is not mandatorily negotiable.

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

There are 14 officers in the Borough's police department: one chief, one captain, one detective, three sergeants and eight patrol officers. The PBA represents the Borough's regular, full-time patrol officers and sergeants. The Borough and the PBA entered into a collective negotiations agreement effective from

January 1, 1989 through December 31, 1991. Article VII is entitled Hours. Sections 1, 2, and 3 provide:

Section 1. The hours of employment of the uniformed members and officers of the police department and force in the municipality shall not exceed ten (10) continuous hours in any one day nor more than forty (40) hours in any one week. No such member or officer shall be required to perform any police duty which would involve more time than herein specified, except in case of emergency.

Section 2. Hours

A. The tours of duty shall be established by the employer, through the chief of police and same shall be posted for the following calendar year not later than December 1st, next preceding said calendar year. Said tours shall include ten hour steady shifts, to be established by the chief of police pursuant to the powers defined in Article VI herein.

B. The employer shall have the right, for efficiency of its operations, to make changes in starting and stopping times of the daily work schedule, and to vary from the work schedule and tours of duty previously assigned.

Section 3. The parties further agree that they shall discuss changes in the daily or weekly work schedule which may be necessitated for the efficient operation of the work force prior to implementation of such changes, and that the PBA shall have the right to submit written recommendations with respect to any such changes. The aforesaid changes shall not be made unless the chief of police confers with the Designated Representative of the PBA, 24 Hours in advance unless a change is required as a result of an Emergency as defined in Section 4 of this Article.

Section 4 authorizes the police chief to require off-duty officers to work during emergencies at overtime compensation rates. Article VII memorialized the work schedule which had been implemented in

January 1, 1986. That schedule called for patrol officers to work four ten hour days a week.

On January 21, 1992, the police chief, in accordance with a resolution of the Borough Council, implemented a new work schedule. This new schedule requires police officers to work rotating shifts of eight hours a day, five days a week.

Under the old work schedule, there were three shifts: 10 p.m. to 8:00 a.m., 8:00 a.m. to 6:00 p.m., and 5 p.m. to 3 a.m. One day a week there were four officers on a shift, but on other days there were two officers on a shift. If an officer on a two person shift was absent, another officer would be called in for that portion of the shift which was not overlapped by other shifts and would be paid overtime compensation. For example, if an officer was absent on the first shift, then another officer would be called in to work between 3:00 a.m. and 8:00 a.m. since neither the second nor the third shift provided coverage for that time. No ranking officer worked on the first shift, the captain and/or chief worked on the second shift, and two sergeants worked on the third shift.

Under the new schedule, there are also three shifts: 12:00 a.m. to 8:00 a.m., 8:00 a.m. to 4:00 p.m., and 4:00 p.m. to 12:00 p.m. The shifts do not overlap. Except for the first and third shifts on Monday, all shifts have three officers assigned. For five days a week, a superior officer works on each shift. The captain and chief work on the 8:00 a.m. to 4:00 p.m. shift, but the captain floats to cover other shifts. According to the Borough, the new

schedule also reduces overtime assignments for dispatchers since one of the three officers on duty can replace an absent dispatcher.

The Borough contends that budgetary problems required it to change the work schedule. It states that the four day, ten hour weekly work schedule results in extra days off and added overtime and holiday costs. The budgets for 1988, 1989, 1990, and 1991 show expenditures exceeding the salary and wage accounts for police officers and consequent transfers of funds from other accounts. In November 1990, the Borough applied for and received an emergency exclusion of \$65,000 in police salaries and wages from the limits imposed by the local government cap law, N.J.S.A. 40A:4-45.1 et seq. The Borough cited an unspecified discrepancy in the police contract that required additional wages; overtime compensation paid to cover shifts of three injured officers absent for nine months; many arrests resulting in many court appearances for police officers and therefore extra overtime and on-call compensation; many recreational activities requiring police coverage; new training courses that required paying officers overtime; and a marked increase in narcotics and other investigations resulting in extra overtime compensation. For the 1991-1992 fiscal year, the Borough determined it would incur a deficit of \$93,000 if expenditures for the second half of that year matched expenditures for the first half. The Borough therefore initiated action with the Department of Personnel to lay off up to three patrol officers on or after April 1, 1992. The police chief asserts that the four day, ten hour

weekly schedule requires 20 officers for it to work properly and makes it "next to impossible" to staff the department, but that "proper administration of the department within the budget can be accomplished, as well as absorb layoffs, with the present five day, eight hour schedule."

The PBA asserts that the current schedule is not economically necessary. It notes that the reasons cited for the 1990 emergency application do not include the four day, ten hour work schedule. It had proposed that the four day, ten hour work schedule be reinstated. It seeks to submit this proposal to interest arbitration.

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 proposal's wisdom, only its abstract negotiability. We also limit ourselves to deciding whether the revised proposal is mandatorily negotiable since permissive subjects may not be submitted to interested arbitration absent the employer's consent. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Work hours, including work schedules, are mandatorily negotiable as a general rule. See Local 195, IFPTE, 88 N.J. 393 (1982); In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); City of Asbury Park and Asbury Park PBA Local No. 6, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90); Bor. of Maywood and Maywood PBA Local 102, P.E.R.C. No. 83-107, 9 NJPER 144 (¶14068 1983), aff'd App. Div. Dkt. No. A-3071-82T2 (12/15/83); City of Newark v. IAFF, Local 1860, AFL-CIO, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981), aff'd App. Div. Dkt. No. A-4143-80T3 (3/25/83); Bor. of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Dkt. No. A-3329-79 (5/7/81). But a particular work schedule proposal will be held not mandatorily negotiable if it would significantly interfere with a governmental policy determination. See Irvington PBA Local #29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) (employer proved need to correct discipline problem on midnight shift, increase continuity of supervision, and improve training); Bor of Atlantic Highlands, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984) (proposed work schedule would have eliminated relief officer system and caused coverage gaps). Each case must be decided on its own facts. Mt. Laurel; Roselle.

We now turn to the facts of this case. The proposed return to the four day, ten hour schedule intimately and directly affects the police officers since they would have more days off. The


Borough's reason for implementing the five day, eight hour schedule is that the previous schedule costs too much: the extra days off resulted in extra overtime compensation and holiday pay to replace absent officers. The record does not indicate what portion of the Borough's increased labor costs may be attributed to the previous work schedule as opposed to other factors such as those identified in the 1990 emergency application. In any event, a desire to reduce labor costs does not make a work schedule issue non-negotiable.

Bor. of Little Ferry, P.E.R.C. No. 91-25, 16 NJPER 494 (¶21217 1990.) Compensation and other labor costs are mandatorily negotiable as the employer can present its financial interests in negotiations and seek economic trade-offs. If the labor cost issues cannot be settled through negotiations, they can be presented to an interest arbitrator. The interest arbitrator must consider the interests and welfare of the public, the employer's lawful authority, including the cap law, and the financial impact of any award on the governing unit, its residents, and taxpayers as well as the other factors specified by N.J.S.A. 34:13A-16(g). If the arbitrator fails to consider these factors in addressing the labor costs issues, an award may be vacated. New Jersey State PBA, Local 29 v. Town of Irvington, 80 N.J. 271 (1979). Under these circumstances, we apply the general rule that work schedule proposals are mandatorily negotiable.

ORDER

The PBA's proposal that officers work steady shifts of ten hours a day, four days a week is mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 25, 1992
Trenton, New Jersey
ISSUED: June 26, 1992