

I.R. NO. 2000-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF SECAUCUS,

Petitioner,

-and-

Docket No. SN-2000-57

P.B.A. LOCAL NO. 84,

Respondent.

SYNOPSIS

As the result of the Town's decision to increase the minimum staffing level for police on the shifts straddling midnight January 1, 2000, it cancelled all leaves of absence for officers assigned to work those shifts. The PBA filed a grievance alleging a violation of a provision in the collective agreement that allows a minimum of two employees per shift to be granted leave. The Commission Designee found the issue in the grievance to implicate compensation rather than minimum staffing and denied the Town's request for a stay of the arbitration.

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Appearances:

For the Petitioner,
Martin R. Pachman, PC, attorney

For the Respondent,
Lindabury, McCormick & Estabrook, attorneys
(Donald B. Ross, of counsel)

INTERLOCUTORY DECISION

On November 24, 1999, the Town of Secaucus (Town) filed a petition for Scope of Negotiations Determination with the Public Employment Relations Commission (Commission) seeking to restrain the arbitration of a grievance challenging the Town's directive to cancel leaves of absence during certain shifts on December 31, 1999 and January 1, 2000. The Petition was accompanied by an application for interim relief. On November 24, 1999, an order to show cause was executed and a return date was initially scheduled for December 8, 1999 and, subsequently, rescheduled to December 9, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The Town of Secaucus is located in Hudson County and measures approximately 5.8 miles. The Town is bisected by some of the State's most heavily traveled roadways, including the New Jersey Turnpike and Routes 3 and 495 which feed the Lincoln Tunnel. Although the Turnpike is patrolled by the New Jersey State Police, the Town shares the responsibility for emergency services on that portion which traverses Secaucus. Within the boundaries of the Town are five major hotels, a convention center, two hospitals and a large number of high rise apartment complexes. The Secaucus police department consists of 1 police chief, 5 lieutenants, 7 sergeants and 38 police officers. The rank-and-file police officers are represented by PBA Local 84 (PBA). The police chief has declared a state of emergency within the Town in conjunction with the upcoming New Year's Eve time period. All leaves of absence have been cancelled including personal, compensatory time and vacation for the evening and midnight shifts straddling midnight January 1, 2000. Leaves have been cancelled to ensure that a full complement of officers will report for duty as scheduled for their respective shifts. On the evening shift on December 31, 1999, which normally ends at 11:30 p.m., the full scheduled shift complement consists of 10 uniformed police officers, 2 detectives and 2 superior officers. The chief has determined that the detectives will work in uniform on patrol during the evening shift. The "midnight" shift reports at 11 p.m. on December 31 and remains on-duty until 7:30 a.m. January 1,

2000. That shift consists of 6 uniformed and 2 superior officers. Additionally, the chief has called in 3 officers on overtime to work from 10 p.m., December 31 to 6:30 a.m. January 1.

The chief's emergency declaration relates to two factors. Secaucus' major hotels are holding millennium extravaganzas and expect extraordinarily large crowds. It is also anticipated that there will be an extremely high volume of traffic on the arteries leading to and from the Lincoln Tunnel which often results in heavier traffic in the Town as vehicles attempt to use the local streets in order to circumvent the major thoroughfares. However, the chief's overriding concern prompting his emergency declaration relates to the "Y2K" situation. The chief's action is in response to his concern that there is no way to determine the impact of "Y2K" on the multiplicity of computer-related systems relied upon by hospitals, places of public accommodation, high-rise residences and other governmental functions.

Section 8.08 of the parties collective agreement addresses the use of vacation and compensatory time by police officers and states, in pertinent part,

The Town agrees to permit a minimum of two (2) patrolmen from each shift to utilize vacation or compensatory time.

Section 10.03 of the agreement pertains to use of personal days and states, in pertinent part,

Each employee shall also be entitled to one (1) non-accumulative personal business day which is to be scheduled by the mutual consent of the employee and the supervisor within the framework of Article 8.08.

Section 8 of the agreement pertains to mandatory overtime for police officers and states, in relevant part:

8.02 All overtime work is mandatory upon request by an appropriate superior officer. In the event employees must be held over onto the next shift, the superior shall request volunteers from the prior shift, and if there are insufficient volunteers, then in that event the least senior officers will be required to work. Any employee working beyond the end of his/her shift shall be compensated at the premium rate of time and one-half...in lieu of cash payments, an employee may opt to receive compensatory time off at the premium rate of time and one-half. Such time may be taken only when scheduled with the chief so as not to unreasonably interfere with departmental operations....

8.03 Overtime duty which requires one or more police officers to be called in shall be granted by a rotating seniority list made up by platoons. In such instances, the platoon not scheduled to work within that twenty-four (24) hour period shall be the one called. Specialists shall be utilized in accordance with their own seniority system. In the event use of the appropriate seniority list does not provide the manpower required, the least senior officer(s) reached shall be required to report, and in the event the required manpower is still not reached, the department may require any member to work....

8.04 If an employee is recalled to duty on a day he is scheduled to be off, he shall receive payment for all time worked, with a minimum guarantee of three (3) hours at the premium rate set forth in paragraph 8.02 above, with the option of time off as set forth therein....

In addressing scope of negotiations issues, the Commission's jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield 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, the Commission does not consider the contractual merits of the grievance or any contractual defenses the City may have.

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 a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers 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.... 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 policy-making 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. [Id. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The Commission has long held that the determination of minimum staffing levels is an inherent managerial prerogative and not subject to collective negotiations. Franklin Borough, P.E.R.C. No. 98-138, 24 NJPER 273 (¶29130 1998). See also City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976). "However, within

a framework of these [staffing] levels, an employer must negotiate over such matters as which employees may be off, what hours during the day employees work and the schedules employees are required to work." Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247, 247-248 (¶11120 1980), aff'd. NJPER Supp.2d 97 (¶80 App. Div. 1981). See also Township of Livingston, P.E.R.C. No. 90-30, 15 NJPER 607, 609 (¶20252 1989). "Nevertheless, a public employer has a reserved right to deny leave requests if granting them would prevent it from deploying the specific number of police officers required for a particular shift. Teaneck Tp., P.E.R.C. No. 89-12, 14 NJPER 535 (¶19228 1988); Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14, 17 (¶12006 1980); see also City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982)." Borough of Roselle at 247-248.

In the instant case, the grievance does not seek to limit the Town's ability to deploy a specific number of police officers determined by the Town to be necessary for a particular shift. The PBA concedes that it is the Town's prerogative to determine any number of officers it establishes as necessary to preserve public safety.^{1/} The PBA cites to provisions contained in section 8 of the collective agreement pertaining to overtime in support of its argument that it does not seek to inhibit the

^{1/} No issue of special qualifications has been raised here.

employer's ability to determine the necessary staffing level. The PBA asserts that the Town's right to deploy officers at any particular time is contemplated and preserved through the overtime article in the collective agreement. The PBA argues, and the Town does not dispute, that no staffing shortage exists which would prevent the Town from deploying the number of officers it seeks for the affected shift by operating pursuant to the overtime provisions contained in the collective agreement.


The Town contends that once it has exercised its inherent managerial prerogative to establish the minimum staffing level necessary to preserve public safety on a particular shift, it may deny leave requests which, if granted, would result in a staffing level below the established minimum. The Town rejects the PBA's invitation to meet its staffing goals through overtime assignments. The Town argues that meeting its minimum staffing level through overtime fundamentally ignores the underlying nature of the managerial prerogative. The Town contends that as a practical matter almost any time that an employer wants to increase the level of staffing on a particular shift it could do so through the use of overtime, however, that undermines the exercise of the prerogative. It asserts that "...the consistent understanding of the managerial prerogative enunciated in Commission cases is the right of the employer to meet its legitimate minimum needs by either scheduling sufficient employees or maintaining the scheduled number of employees on duty to meet those needs." (Town brief at p. 6, 12/6/99).

This issue is brought before me on an application for interim relief. The moving party must meet all of the requisite

tests established in order to obtain such extraordinary relief. The PBA frames the issue of the grievance in terms of compensation. It argues that the Town can comply with section 8.08 of the collective agreement and permit a minimum of two officers from each shift to use vacation or compensatory time, bring in other officers on overtime and not affect the Town's exercise of its managerial prerogative to deploy the specific number of police officers it deems appropriate under the circumstances. Once the Commission is satisfied that a grievance does not seek a remedy which would limit an employer from exercising its managerial prerogatives, it has refused to restrain the grievance from proceeding to arbitration. See Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (120169 1989). Under the circumstances of this case, I am not convinced that the Commission will find in favor of the Town and restrain arbitration. The underlying issue sought to be resolved in the grievance appears to be compensation, not the determination of the staffing level. Consequently, I find that the Town has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision, a requisite element to obtain interim relief.

ORDER

The Town's application for interim relief is denied. This case will proceed through the normal scope of negotiations processing mechanism.


Stuart Reichman
Commission Designee

DATED: December 13, 1999
Trenton, New Jersey