

P.E.R.C. NO. 91-103

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOUND BROOK BOROUGH,

Petitioner,

-and-

Docket No. SN-91-62

TWIN BROOK PBA LOCAL 148,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Twin Brook PBA Local 148 against Bound Brook Borough. The grievance alleged that the Borough violated the parties' collective negotiations agreement when it called in a dispatcher instead of a police officer to cover the shift of a vacationing lieutenant. The Commission finds that this dispute over the allocation of overtime opportunities is at least permissively negotiable.

P.E.R.C. NO. 91-103

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOUND BROOK BOROUGH,

Petitioner,

-and-

Docket No. SN-91-62

TWIN BROOK PBA LOCAL 148,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, attorneys
(Steven S. Glickman, of counsel)

For the Respondent, Abramson & Liebeskind Associates
(Mark D. Abramson, consultant)

DECISION AND ORDER

On February 15, 1991, Bound Brook Borough petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance which Twin Brook PBA Local 148 has filed. The grievance alleges that the Borough violated the parties' collective negotiations agreement when it called in a dispatcher instead of a police officer to cover the shift of a vacationing lieutenant.

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

The PBA is the majority representative of the Borough's police officers, detectives, sergeants and lieutenants. Civilian dispatchers are not represented by the PBA. The parties have entered into a collective negotiations agreement effective from

January 1, 1990 through December 31, 1991. The agreement's grievance procedure ends in binding arbitration.

A lieutenant and two patrol officers were scheduled to work the 3-11 p.m. shift on October 4 and 5, 1990. The lieutenant requested and received vacation leave on those days. Because a civilian dispatcher had resigned on September 28, 1990, the lieutenant had been assigned to dispatching duties until a replacement was hired. The lieutenant would would have been performing such duties on October 4 and 5 if he had not gone on vacation. The chief called in another dispatcher to work on his shift both days.

On October 18, 1990 the PBA filed a grievance asserting that the failure to call in a police officer to replace the lieutenant violated Article 22. This provision states:

Regular or full-time Officers of equal or lesser ranks shall be given preference for all interdepartmental over-time assignments. No Officer shall be eligible for over-time if he has not performed his last duty assignment unless such over-time is a result of schedule changes.

The Chief and the Borough Council denied the grievance, finding no contract violation. The PBA demanded arbitration and this petition ensued.

The Borough states that the grievance challenges its prerogative to select personnel for assignments based upon their particular skills and qualifications. The police chief asserts in an affidavit that he has directed superior officers on a shift to replace absent dispatchers on that shift when there is sufficient

police staffing already on that shift; and he has called in dispatchers to replace absent dispatchers on a shift where assigning a scheduled officer to the desk would unacceptably reduce staffing on that shift. The Borough asserts that calling in a dispatcher, rather than a police officer, to perform dispatching duties is logically unquestionable.

The PBA asserts that the decision to replace the lieutenant created an overtime opportunity which should have been filled in accordance with the contract. It notes that in 1989, when the same lieutenant was scheduled for a day off, the Borough acceded to its contention that an officer of equal or lesser rank should be called in instead of a dispatcher.

The boundaries of our scope of negotiations jurisdiction are 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. [78 N.J. at 154].

Accordingly we only determine whether the Borough could legally agree to arbitrate the grievance. We do not determine whether the PBA had a contractual right to have a police officer called in to cover the desk during the lieutenant's vacation.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters:^{1/}

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 fire fighters, 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 fire fighters, 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]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No.

^{1/} The scope of negotiations for police and fire employees 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).

A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers.

Based on the facts, we find this grievance is at least permissively negotiable. This dispute is not materially different from a prior scope of negotiations decision which involved these same parties and the same provision of their agreement. Bound Brook Bor., P.E.R.C. No. 88-30, 13 NJPER 760 (¶18287 1987), allowed arbitration of a grievance asserting that the reassignment of a detective to work on the desk on Thanksgiving deprived a senior patrol officer of an overtime opportunity. We held:

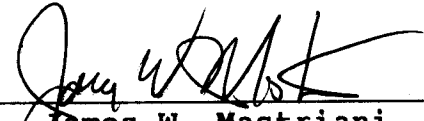
Once the Borough determined that this post should be covered, it could legally agree that a vacancy caused by leaves of absence be temporarily filled by a qualified officer selected pursuant to a negotiated procedure for allocating overtime work. See Middletown. There is no dispute as to the qualifications of the pool of officers who could have covered the desk, nor is there any question of the Borough needing to fill the vacancy on an emergent basis. On balance we find that the grievance relates to the mandatorily negotiable issue of the allocation of overtime opportunities.

We reject the employer's contention that its need for the "special skills" of a dispatcher makes this dispute non-arbitrable. The chief's affidavit established that both dispatchers and police officers are qualified to perform and have performed dispatching duties.

ORDER

The Borough's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Regan, Smith and Wenzler voted in favor of this decision. Commissioner Goetting voted against this decision.

DATED: May 21, 1991
Trenton, New Jersey
ISSUED: May 21, 1991