

P.E.R.C. NO. 2009-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2008-081

P.B.A. LOCAL NO. 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the City of Trenton's request for a restraint of binding arbitration of a grievance filed by PBA Local No. 11. The grievance alleges the City violated the parties' collective negotiations agreement by not providing police officers with four days off following four consecutive days on duty. The Commission retrains arbitration to the extent the grievance challenges the City's right to require overtime without declaring an emergency, even if overtime would interfere with the contractual work schedule. The request for a restraint of binding arbitration is denied to the extent the grievance claims that overtime should first be offered to qualified volunteers.

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.

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2.

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Appearances:

For the Petitioner, Knapp, Trimboli & Prusinowski, LLC,
attorneys (Stephen E. Trimboli, on the brief)

For the Respondent, Kroll Heineman, attorneys (Raymond
G. Heineman, on the brief)

DECISION

On May 28, 2008, the City of Trenton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 11. The grievance alleges that the City violated the parties' collective negotiations agreement by not providing police officers with four days off following four consecutive days on duty. We grant the request for a restraint in part, and deny it in part.

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

The PBA represents all police officers below the rank of sergeant. The parties' most recent contract is effective from July 1, 2000 through December 31, 2005. The grievance procedure ends in binding arbitration.

The parties' agreement provides that patrol officers will work four consecutive days or nights and then have four days off. On July 5, 2007, the PBA filed a grievance asserting that the City breached the agreement by instituting a mandatory overtime system that "changed the terms of the agreement and modified the hours of employment without negotiating" On July 10, the police director denied the grievance. He stated that mandatory overtime is a long-standing practice and the use of mandatory overtime in a public safety agency for public safety purposes is a managerial prerogative. On September 4, the PBA demanded arbitration. This petition ensued.

An arbitration hearing was held on May 30, 2008. We are not aware of any arbitration award.

On September 25, 2008, we issued a decision on a related scope of negotiations petition. See City of Trenton, P.E.R.C. No. 2009-13, 34 NJPER 285 (¶101 2008). We then asked the parties whether any issues remained in dispute.

The PBA responded that there were none. The City responded that it seeks a ruling on the arbitrability of two claims that the PBA had previously asked the arbitrator to determine: whether

the City is contractually barred from mandating overtime work for patrol officers by virtue of alleged contract language requiring patrol officers to have four consecutive days off, and whether the City is limited by contract to mandating overtime only for "emergencies" and "special events." The PBA did not reply further. However, in a previously filed brief, the PBA said that it is "merely seeking as a remedy the use of qualified volunteers for overtime assignments rather than the use of mandated overtime in the first instance."

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

Thus, we do not consider the merits of the grievance or any contractual defenses the County may have.

As this dispute arises in the context of a grievance involving police officers, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. A subject is mandatorily negotiable if it is not preempted by

statute or regulation and it intimately and directly affects employee work and welfare without significantly interfering with the exercise of a management prerogative. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). A subject involving a management prerogative can still be permissively negotiable if agreement would not place substantial limitations on government's policymaking powers. No preemption issue is presented.

The City asserts that the PBA raised two issues to the arbitrator that require a scope of negotiations determination. However, the PBA raised those issues before we issued our decision in City of Trenton, where we reiterated the well-settled law that an employer has a managerial prerogative to determine that overtime work is needed and need not declare an emergency under N.J.S.A. 40A:14-134 before it may deviate from an overtime allocation system. We held, however, that the PBA may pursue its claim that overtime should be offered first to qualified volunteers. We now add that the City may require overtime to meet its staffing needs, not just in an emergency, even if such overtime interferes with the contractual four-day off provision. However, we reiterate that the PBA may pursue its claim that such overtime must first be offered to qualified volunteers.

ORDER

The request of the City of Trenton for a restraint of binding arbitration is granted to the extent the grievance challenges the City's right to require overtime without declaring an emergency, even if overtime would interfere with the contractual work schedule. The request is denied to the extent the grievance claims that overtime should first be offered to qualified volunteers.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan recused herself.

ISSUED: December 18, 2008

Trenton, New Jersey