

P.E.R.C. NO. 2011-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WAYNE,

Petitioner,

-and-

Docket No. SN-2009-045

WAYNE PATROLMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 136,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of Wayne for a restraint of binding arbitration of a grievance filed by Wayne Patrolmen's Benevolent Association, Local No. 136. The grievance asserts that off-duty Patrol Division Officers have been improperly denied overtime opportunities due to the use of on-duty Traffic and Communications Bureau officers to cover vacancies in the Patrol Division. The grievance further alleges that officers have been improperly denied use of leave time because the Township is redeploying Traffic and Communications Bureau officers only for unscheduled absences, and is not counting three particular officers toward minimum staffing requirements for scheduled absences. The Commission restrains arbitration to the extent the PBA claims that officers are being deprived of overtime opportunities due to the Township's using Traffic and Communications Bureau officers to cover vacancies in the Patrol Division because the employer has a managerial prerogative to temporarily reassign employees during their regularly scheduled work hours. The Commission holds that the PBA's claims that the Township is restricting unit members' ability to use contractual leave time relate to the negotiable and legally arbitrable issue of the use of contractual leave time.

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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Appearances:

For the Petitioner, Scarinci Hollenbeck, LLC, attorneys
(Matthew J. Giacobbe, of counsel; Adam S. Abramson, on
the brief)

For the Respondent, Klatsky, Sciarrabone & DeFillippo,
attorneys (David J. DeFillippo, of counsel)

DECISION

On February 5, 2009, the Township of Wayne petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Wayne Patrolmen's Benevolent Association, Local No. 136. The grievance asserts that off-duty Patrol Division officers have been improperly denied overtime opportunities due to the use of on-duty Traffic and Communications Bureau officers to cover vacancies in the Patrol Division. The grievance further alleges that officers have been improperly denied use of leave time because the Township is redeploying Traffic and Communications Bureau officers only for unscheduled absences, and is not

counting three particular officers toward minimum staffing requirements for scheduled absences. We grant a restraint of arbitration over the PBA's claim that officers are being denied overtime opportunities due to the Township's use of Traffic and Communications Bureau officers to cover vacancies in the Patrol Division, but deny a restraint over the PBA's claim that the Township is restricting unit members' ability to use leave time.

The parties have filed briefs and exhibits. The Township has filed the certification of its Chief and Deputy Chief. The PBA has filed the certification of its President. These facts appear.

The PBA is the majority representative for all Township police officers below the rank of Deputy Chief. On July 17, 2008, the Township established a new policy on overtime and minimum staffing requirements in the Patrol Division. First, the policy provides that if staffing falls below the established minimums in the Patrol Division, on-duty officers from the Traffic Bureau and/or the Communications Bureau will be redeployed to the Patrol Division. Second, the policy states that three particular officers will be counted toward staffing minimums for unscheduled absences, such as the same day use of sick leave, but not for scheduled absences, such as planned vacations or compensatory time. In response to the new policy,

the PBA filed a grievance.^{1/} On January 19, 2009, the PBA filed a request for submission of a panel of arbitrators, asserting that "members of the PBA had been denied overtime opportunities through the redeployment of traffic and communication personnel. Moreover, members of the PBA have been improperly denied permission to utilize paid leave (i.e., personal, vacation, comp) because of the refusal to redeploy said personnel as well as refusal to count the three new officers . . . towards the staffing level."

The police department is divided into three Divisions- - Patrol, Investigative and Operations. The Traffic Bureau is contained within the Patrol Division and the Communications Bureau is within the Operations Division. Traffic and Communications Bureau officers are trained police officers who are equipped in the responsibilities of the Patrol Division, and they also possess more specialized training in the bureau to which they are assigned. All members of the police department can request overtime in the Patrol Division, regardless of assignment. Overtime is distributed by seniority and when the officers were last assigned overtime.

Officers in the Patrol Division work either a twelve-hour night shift, from 6:00 p.m. to 6:00 a.m. or 7:00 p.m. to 7:00 a.m., or a twelve-hour day shift, from 6:00 a.m. to 6:00 p.m. or

^{1/} The record does not include a copy of the grievance.

7:00 a.m. to 7:00 p.m. The officers work a continuing pattern of being on-duty for three days, off-duty for two days, on-duty for two days and off-duty for three days. Officers in the Communications Bureau work a twelve-hour shift, from 12:00 p.m. to 12:00 a.m., and work the same pattern of days as officers in the Patrol Division. Officers assigned to the Traffic Bureau work an eight-hour shift, from 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m., five days a week. When an officer from the Traffic or Communications Bureau is used in the Patrol Division, the officer retains his or her regularly assigned work hours.

With regard to the three officers who were counted toward minimum staffing requirements for unscheduled but not for scheduled absences, the department has a policy of requiring new officers with law enforcement experience to be on double-up status for approximately three to six weeks to provide the new officers time to become acquainted with the department and the Township's borders, patrol zones, streets, and business and residential areas.^{2/}

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

^{2/} One officer was on double-up status from July 9, 2008 to July 20 and from August 10 to August 20, the second from July 16 to August 8, and the third from July 16 to August 8. The three officers are no longer on double-up status and are counted toward minimum staffing requirements for both scheduled and unscheduled absences.

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 employer may have.

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. [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 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

policymaking 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.

[87 N.J. at 92-93; citations omitted]

Because this case involves a grievance, arbitration is permitted if its subject is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶1111 App. Div. 1983).

The Township contends that it is redeploying Traffic and Communication Bureau officers to cover vacancies in the Patrol Division to "effectively assign on-duty officers needed to meet minimum manpower requirements of the Patrol Division, to provide adequate public safety to the Township, and to use overtime in a cost efficient manner in these difficult economic times." The Township also asserts that it did not arbitrarily establish restrictions on an officer's ability to use contractual leave.

The PBA responds that the redeployment of Traffic and Communications Bureau officers to cover vacancies in the Patrol Division was "motivated by the desire to save overtime costs." Additionally, the PBA asserts that the Township cannot establish two separate minimum staffing levels - one for scheduled absences (where officers will not be re-deployed temporarily to the Patrol Division) and one for unscheduled absences (where re-deployments will be effectuated to save costs).

We have decided many cases dealing with the reallocation of overtime opportunities. This case is factually similar to Borough of Montvale, P.E.R.C. 97-62, 23 NJPER 16 (¶28015 1996). There, the police chief issued a memorandum requiring on-duty detectives to fill in for absent patrol officers in lieu of requiring off-duty patrol officers to fill the vacancies on an overtime basis. We granted the employer's request for a restraint of arbitration, finding that arbitration of the grievance would have required the employer to increase its staffing levels on a periodically recurring basis beyond that which it deemed necessary. Like the instant matter, in Montvale there was no allegation that the officers covering the vacancy were working out-of-title or rank or that work had been assigned to non-unit employees. Traffic and Communications Bureau officers are trained police officers who are equipped in the responsibilities of the Patrol Division, and all officers can request overtime in the Patrol Division.

A more recent analogous case is Union Cty., P.E.R.C. No., 2010-28, 35 NJPER 389 (¶130 2009), where the County reassigned correction officers from their normal assignments to fill vacant posts rather than call in other officers to perform those duties on an overtime basis. We granted a restraint of arbitration to the extent the grievance addressed temporary reassignments within a job classification and job description and did not involve a

change in work hours. Similarly in this case, when a Communications or Traffic Bureau officer is used in the Patrol Division to cover a vacancy, it is a temporary reassignment and the officer retains his or her regularly assigned work hours.

The cases relied on by the PBA are inapposite as each involved assertions of officers working out of title or rank. In Bound Brook Tp., P.E.R.C. No. 88-30, 13 NJPER 760 (¶18287 1987), we found mandatorily negotiable and legally arbitrable the issue of whether desk officers should have been offered overtime to cover vacancies at the desk instead of reassigning a detective to cover the desk. There, the detective's job description did not include desk duty. In Town of Kearny, P.E.R.C. No. 98-22, 23 NJPER 501 (¶28243 1997), aff'd 25 NJPER 400 (¶30173 App. Div. 1999), the Township modified the overtime policy to provide that a lower-ranking officer could cover for a superior officer in an acting capacity rather than call in an off-duty superior officer of the same rank to fill the vacant post. We found the issue to be mandatorily negotiable because officers have a negotiable interest performing work in their own job titles, work for which they are presumably the most qualified, before that work is offered to officers working out of title. The employer's interest in using lower-ranked employees in an acting capacity is primarily in saving money; an interest that can be addressed through the collective negotiations process. This case is

distinguishable because the employer is filling police officer vacancies with other police officers working within their own job titles. Accordingly, we restrain arbitration over the portion of the PBA's claim that officers are being deprived of overtime opportunities due to the Township's use of Traffic and Communications Bureau officers to cover vacancies in the Patrol Division.

With regard to the PBA's assertion that officers have been denied leave time due to the Township's refusal to redeploy officers to cover vacancies for scheduled absences, and the Township's refusal to count three particular officers toward minimum staffing requirements for scheduled absences, these issues relate to the negotiable and legally arbitrable issue of the use of contractual leave time. See Nutley Tp., P.E.R.C. No. 2010-89, __ NJPER __ (¶__ 2010); City of Newark, P.E.R.C. No. 2002-040, 28 NJPER 134 (¶33041 2002); Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989); Borough of Bradley Beach, P.E.R.C. No. 90-60, 16 NJPER 43 (¶21020 1989). Whether the Township has in fact denied leave time in violation of a contractual entitlement goes to the merits of the grievance and is outside of our limited scope of negotiations jurisdiction. Ridgefield Park. Accordingly, we deny the request for a restraint of arbitration over the PBA's claim that the Township

is restricting unit members' ability to use contractual leave time.

ORDER

The request of the Township of Wayne for a restraint of binding arbitration is granted to the extent the PBA claims that officers are being deprived of overtime opportunities due to the Township's using Traffic and Communications Bureau officers to cover vacancies in the Patrol Division. The request is denied to the extent the PBA claims that the Township is restricting unit members' ability to use contractual leave time.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: August 12, 2010

Trenton, New Jersey