

P.E.R.C. NO. 2011-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HAWTHORNE,

Petitioner,

-and-

Docket No. SN-2010-101

HAWTHORNE PBA LOCAL 200,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Hawthorne for a restraint of binding arbitration of a grievance filed by Hawthorne PBA Local 200. The grievance asserts that the Borough violated the parties' collective negotiations agreement when it did not replace an officer to meet the five-officer minimum staffing level. The Commission holds that the Borough has a non-negotiable managerial prerogative to determine staffing levels and whether overtime will be worked. The Commission notes that the PBA did not assert facts to support its argument that the Borough unilaterally changed work schedules.

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, Knapp, Trimboli & Prusinowski, LLC,
attorneys (Fredric M. Knapp, on the brief)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Merick H. Limsky, on the brief)

DECISION

On May 24, 2010, the Borough of Hawthorne petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Hawthorne PBA Local 200. The grievance asserts that the Borough violated the parties' collective negotiations agreement when it failed to replace an officer to meet the five-officer minimum staffing level. We grant the Borough's request for a restraint of binding arbitration.

The parties have filed briefs. The Borough also has filed exhibits and a certification from the Chief of Police. These facts appear.

The PBA represents the Borough's rank and file police officers. The Borough and PBA are parties to a collective negotiations agreement effective from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration.

Appendix B of the parties' agreement is entitled "Hawthorne Police Department Basic Guidelines and Rules for Operations Under a 12 Hour Schedule" and provides that the minimum staffing on each squad will be five officers, but may be reduced to four officers when required to permit the use of early out compensation time.

On October 25, 2009, an officer was absent from his squad and the Borough did not replace him with an officer on overtime, resulting in four officers on duty rather than five. On November 2, the PBA filed a grievance alleging a violation of Appendix B and a "unilateral change in terms and conditions of employment affecting officer workload, bargaining unit scheduling, and officer safety." The Borough denied the grievance, stating that Appendix B provides guidelines rather than binding rules, staffing levels are a non-negotiable managerial prerogative, and no defined safety issues were raised, and even if they were, staffing levels would remain non-negotiable. The PBA demanded binding arbitration. This petition ensued.

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 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), permits arbitration if the subject of the dispute 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 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged to have been violated is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

The Borough asserts that it has a managerial prerogative to set minimum staffing levels.

The PBA responds that it is not challenging the Borough's ability to change its minimum staffing level, but contends that

the scheduling and overtime provisions of the parties' agreement were violated when the Borough operated under the minimum staffing level defined in Appendix B. The PBA further responds that the Borough does not dispute that the minimum staffing level had been set at five officers, and that this was the first time an officer was not called in to meet the minimum staffing level. The PBA also responds that an employer's obligation to call in an officer on overtime to meet minimum staffing levels is negotiable. To support this argument, it relies on a series of cases that hold that an employer does not have a managerial prerogative to create per se limitations on employees' use of leave to maintain minimum staffing.^{1/} These cases do not hold that the decision whether to call an officer in for overtime to meet minimum staffing levels is negotiable.

The Borough has a non-negotiable managerial prerogative to determine the staffing levels for the department. Minimum staffing levels are not permissively negotiable. See Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101 (¶31041 2000) (citing cases generally barring enforcement of contract

^{1/} The PBA cites Pennsauken Tp., P.E.R.C. No. 92-39, 17 NJPER 478 (¶22232 1991); City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982), aff'd NJPER Supp. 2d 141 (125 App. Div. 1984); Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989); City of Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); and Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987).

provisions binding employers to specific staffing levels). The Borough also has a non-negotiable managerial prerogative to determine whether overtime will be worked. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982).

The PBA acknowledges that the Borough has a managerial prerogative to set minimum staffing levels, but asserts that its grievance implicates overtime and scheduling issues rather than minimum staffing. We disagree. The PBA has not submitted a certification containing facts to support its argument that the Borough unilaterally changed officers' schedules or denied vacation to officers on October 25, 2010.

The PBA's contention that the Borough was obligated to have five officers on duty is central to its overtime dispute. Arbitration of that overtime dispute would be tantamount to permitting an arbitrator to review the Borough's minimum staffing decision. West Paterson. Accordingly, the PBA is challenging a staffing determination, not a unilateral alteration of schedules or an overtime dispute. Arbitration of that dispute would substantially limit the Borough's governmental policymaking powers and, therefore, we restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Kregel and Voos voted in favor of this decision. None opposed. Commissioner Eaton abstained. Commissioners Colligan, Eskilson and Bonanni recused themselves.

ISSUED: February 24, 2011

Trenton, New Jersey