

P.E.R.C. NO. 91-52

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and-

Docket No. SN-90-56

WEST NEW YORK PBA LOCAL NO. 88,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that an overtime clause in the collective negotiations agreement between West New York PBA Local No. 88 and the Town of West New York is mandatorily negotiable and legally arbitrable.

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Appearances:

For the Petitioner, Kreiger & Ferrara, attorneys  
(Harold Kreiger, of counsel; Harold Kreiger and Steven A.  
Scheiner, on the brief)

For the Respondent, Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On March 16, 1990, the Town of West New York petitioned for a scope of negotiations determination. The Town sought a determination that an overtime clause in its collective negotiations agreement with West New York PBA Local No. 88, as interpreted by an arbitrator, is not mandatorily negotiable.

Absent an order from the Superior Court directing the Commission to resolve a post-arbitration scope of negotiations issue, the Commission will normally dismiss a post-arbitration petition. On June 26, 1990, Honorable Robert E. Tarleton, P.J. Ch. issued such an order.

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

West New York PBA Local No. 88 represents police officers and detectives below the rank of sergeant. The parties entered into a collective negotiations agreement effective January 1, 1987 through December 31, 1988. The grievance procedure ends in binding arbitration.

The contract's overtime provision provides that employees will be called from a special duty roster in rotation so that all employees will have an opportunity to earn extra compensation when police are requested for special duty. The PBA filed a grievance claiming that the Town violated this provision when it assigned Emergency Response Team members to street crime and graffiti details. The PBA pursued the grievance to binding arbitration. The arbitrator concluded that the Town violated the overtime provision and awarded extra compensation divided among all unit members employed at the time the grievance was filed. The employer has submitted the arbitrator's award. It explains the background of the grievance:

The record establishes that the Town developed the E.R.T. (Emergency Response Team) in 1988. Exhibit J-3 indicates, "The purpose of the team is to provide specially trained and equipped officers to respond to any emergency situation..." Exhibit P-2 is more specific in its description of purpose, listing the following situations:

- "A. Barricaded actors
- B. Hostage situations
- C. Sniper incidents
- D. Large fires or explosions
- E. Plane Crashes
- F. High risk searches of areas or buildings.
- G. Tactical actions
- H. Special events (VIP visits, Parades, etc.)"

The record further reveals that E.R.T. training details were not subject to contractual overtime compensation. Participation was voluntary in nature.

The [street crime and graffiti] details in issue took place [between February 24 and April 12, 1989].

\* \* \*

The testimony showed that the street crime operation involved surveillance and crime prevention work particularly directed toward auto burglaries, marijuana sales and muggings. These assignments were in plain clothes either on foot or in cars. They were not designed to supplement existing patrols but were designed for a specific purpose. The graffiti details involved surveillance to make sure that walls were not dirtied. The Lieutenant who supervised the E.R.T. program testified that it was the Chief's idea to combine E.R.T. training with street crime problems. There was testimony from the Lieutenant and the supervising Sergeant to suggest that the teamwork involved in these details provided important training applicable to the E.R.T. purpose. The single employee assignments to the graffiti details were supposed to provide training, "experience in surveillance in a long, dull, boring job" in order to observe the employee's reaction.

But the arbitrator concluded that E.R.T. training was used to justify circumventing the contractual overtime compensation provisions. He found that the employer's evidence that the details were supposedly training assignments was "wholly unconvincing," and that by calling ordinary police details a training assignment the employer had engaged in a "sham" to avoid contractual overtime obligations.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. We address the abstract issue only: is the subject matter in dispute within the scope of collective negotiations? Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

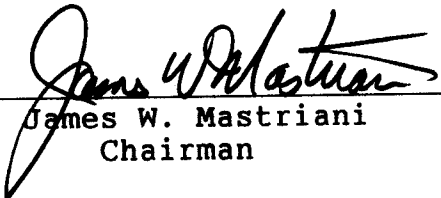
Overtime allocation among qualified employees is, in general, mandatorily negotiable. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). Absent proof that a negotiated agreement over overtime allocation would place substantial limitations on government's policymaking powers, grievances alleging breaches of that agreement are arbitrable. Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981). An employer can agree to schedule qualified employees by seniority so long as the agreement preserves the employer's right to deviate from seniority when necessary to determine governmental policy. Proper training of police officers is such a policy. City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90).

Here, the arbitrator has determined that there was "absolutely no evidence which confirms that the activities in these details were related in any way to the purposes of the E.R.T. program." Given that finding, the subject of the grievance involved overtime allocation and was mandatorily negotiable and arbitrable.

ORDER

The subject of the grievance was mandatorily negotiable and legally arbitrable.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Smith, Bertolino, Wenzler, Johnson and Goetting voted in favor of this decision. None opposed. Commissioner Reid was not present.

DATED: November 26, 1990  
Trenton, New Jersey  
ISSUED: November 27, 1990