

P.E.R.C. NO. 97-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NORTH WILDWOOD,

Petitioner,

-and-

Docket No. SN-96-62

PBA LOCAL NO. 59,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the City of North Wildwood for a restraint of binding arbitration of a grievance filed by PBA Local No. 59. The grievance asserts that the City violated the parties' collective negotiations agreement when it increased the work hours and changed the work schedules of the deputy police chief and captain. The Commission grants a restraint to the extent the grievance challenges the change in work schedules. The Commission denies a restraint to the extent the grievance alleges a breach of an alleged agreement over work hours and compensation.

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, Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly, attorneys (Lawrence Pepper, Jr., of counsel and on the brief; Stephen D. Barse, on the brief)

For the Respondent, Schaffer, Plotkin & Waldman, consultants (Myron Plotkin, consultant)

DECISION AND ORDER

On January 10, 1996, the City of North Wildwood petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by a deputy chief and a captain in the police department. The grievance asserts that the City violated the parties' collective negotiations agreement when it increased the grievants' work hours and changed their work schedules.

The parties filed documents and briefs. Pursuant to our request, they also filed additional documents addressing the supervisory duties performed by the captain and deputy chief. These facts appear.

The City is a coastal community whose population expands from its normal level of approximately 4,900 to 60,000 or 70,000 on summer weekends. PBA Local No. 59 represents the City's patrol officers, sergeants, lieutenants, captains and deputy chiefs. There are approximately 25 employees in the unit. The parties entered into a collective negotiations agreement effective from January 1, 1993 through December 31, 1995 and a successor agreement effective from January 1, 1996 through December 31, 1997. The negotiated grievance procedure ends in binding arbitration.

Some time before the summer of 1995, a lieutenant retired and the police chief proposed a plan to promote two sergeants to the position of lieutenant. The plan has not yet been adopted by the City. Deputy Chief Gary Sloan and Captain John Harkins opposed the plan.

On May 18, 1995, the chief issued orders stating that as of May 21, Sloan's work week and work hours would be Tuesday through Saturday, 9:00 a.m. to 5:00 p.m.; and Harkins' work week and work hours would be Sunday through Thursday, 9:00 a.m. to 5:00 p.m. Before May 21, Sloan and Harkins had worked Monday through Friday, 9:00 a.m. to 4:00 p.m. The work week changes and the reassignments of some other officers remained in effect during the summer months of 1995 and 1996. The work hour changes were permanent.

On May 30, 1995, the PBA filed a grievance. It asserts a breach of an agreement that the deputy chief and captain would work Monday through Friday from 9:00 a.m. to 4:00 p.m. in recognition of

their having many off-duty calls and meetings. The grievance also asserts that the chief's orders implicate overtime compensation and opportunities. On June 2, the City denied the grievance. On June 28, the PBA demanded arbitration. This petition ensued.^{1/}

The City contends that it changed the work week/work hours of the deputy chief and captain to promote efficiency and provide supervision by superior officers on weekends. It contends that the deputy chief and captain supervise all police officers in the division commander's absence. It cites Town of Irvington v. Irvington PBA Local No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980), and argues that the work schedule change here was not negotiable since negotiations could impede its ability to increase efficiency and provide continuous and consistent supervision and discipline. The City argues that it wants supervisory personnel on weekends to deal with law enforcement problems as they arise.

The PBA acknowledges that, under certain circumstances, an employer has the right to change police officers' work schedules unilaterally; however, it contends that those circumstances do not exist here. It cites Mt. Laurel Tp. and Mt. Laurel Police Officers Ass'n, 215 N.J. Super. 108 (App. Div. 1987). The PBA further contends that the issue of compensation for increased work time is mandatorily negotiable and legally arbitrable.

^{1/} The PBA has requested a hearing. We deny that request.

Moreover, the PBA disputes the City's claim that the work week/work hours changes were made to enhance efficiency and improve supervision on weekends. It asserts that the deputy chief is responsible for technical services and that he supervises only one employee, a records clerk. It asserts that the captain is responsible for administrative services and that he supervises only one employee, a secretary. It contends that employees in the department's operational divisions (patrol and detective) are supervised, evaluated and disciplined by lieutenants and, in their absence, sergeants. The lieutenants do not report or answer to the deputy chief or captain; if a shift commander cannot resolve an operational problem, the commander asks the chief what to do.^{2/} The PBA claims that Sloan and Harkins worked Monday through Friday, 9:00 a.m. to 4:00 p.m., for over ten years and that the schedule was the result of an agreement to have them forego any overtime claims and to work as many hours as needed each week to complete their duties.

^{2/} The PBA argues that this work week change decreased efficiency because the only two employees for whom the deputy chief and captain are responsible (the records clerk and secretary) continued to work Monday through Friday. Thus, on weekends, the deputy chief and captain had no employees to supervise and on Mondays and Fridays, the records clerk and secretary worked without direct supervision. Further, the PBA argues that many of the businesses and individuals that the deputy chief and captain regularly deal with are not open or available on weekends. The PBA contends that the deputy chief and captain were unable to complete certain tasks during their weekend tours.

In sum, the PBA contends that the deputy chief and captain perform no supervisory functions regarding officers in the operational divisions, whether on weekends or weekdays, and that their work schedules were changed because of their opposition to the chief's promotional plan.

In his certification, the chief states that the supervisory responsibilities of the deputy chief and captain include supervising employees within their areas of responsibility as well as those officers temporarily assigned to perform tasks in their departments, regardless of the division to which they are assigned. The chief indicates that in his absence and in the absence of a division's commander (lieutenant), the deputy chief and captain exercise functional supervision over that division. In the chief's absence, the highest ranking officer is the "acting chief." On weekends, the deputy chief and captain are the "acting chiefs" during their tours of duty.

The chief states that on weekends, Sloan and Harkins are assigned daytime hours and the patrol lieutenant is assigned night hours. The lieutenant of detectives works a rotating shift. On weekend days, all problems which the shift commanders cannot resolve are referred to Sloan and Harkins. They are authorized to discipline any officer and can authorize overtime.

According to the chief, the work weeks of Sloan and Harkins were changed to (1) allow commanders to remain undisturbed during their off hours; (2) provide "command presence" to deter misbehavior; and (3) have a high-ranking officer on duty to respond

to emergencies and to answer to the public. The chief cites two incidents to demonstrate the authority exercised by Sloan and Harkins on their new schedules. The first concerned an officer who left a cigarette burning on a kitchen counter in police headquarters; the counter was slightly damaged. Sloan orally reprimanded the officer and sent the chief a memorandum about the event. In the second matter, Sloan authorized calling in a dispatcher on overtime.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield 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 contractual merits of the grievance or any contractual defenses the City may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. 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.... 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 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

Consistent with Local 195, IFPTE, 88 N.J. 393 (1982) and the Appellate Division cases on police work schedules cited by the parties, we have held that in general work hours and work schedules are mandatorily negotiable, but an individual work

schedule issue may not be mandatorily negotiable or legally arbitrable if the facts demonstrate that it would significantly interfere with a governmental policy determination.

Under the circumstances of this case, we hold that arbitration of a grievance seeking to prevent these summer work schedule changes would substantially limit the City's governmental policymaking powers. The City proffers several reasons for scheduling the deputy chief and the captain to cover certain summer weekend shifts: (a) it allows commanders to remain undisturbed during their non-duty hours; (b) it provides a "command presence" to deter misbehavior; and (c) it places a high-ranking officer on duty to respond to emergencies and answer to the public.

We will assume, for purposes of this decision, that the work schedule change was motivated, in part, by the deputy chief and captain's opposition to the chief's promotional plan. We note, however, that the promotional plan would have provided additional superior officers and obviated the need for the deputy chief and captain to cover weekends. Moreover, the City has a prerogative to decide that it needs to have high-ranking officers on duty during the summer months when the City's weekend population soars from approximately 4,900 to 60,000 or 70,000 and when the on-duty presence of high ranking officers may be needed to respond to emergencies.

This case does not involve the negotiability of shift schedules for a group of same-ranked officers. The City does not have a group of deputy chiefs and captains who want to negotiate over which of them work when. There is only one deputy chief and only one captain. The decision to have a "command presence" on summer weekends is a governmental policy decision and a contractual restriction precluding such presence would substantially limit that governmental policy. Accordingly, we will restrain binding arbitration over a claim that these work schedule changes breached the contract.


The PBA also seeks to arbitrate its claim that the alleged increase in work hours violated the contract. Both compensation and length of the workday are mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, at 6-7 (1973); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secs., 78 N.J. 1 (1978); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 589 (1980); Local 195, IFPTE v. State, 88 N.J. 393, 403 (1982); Piscataway Township Bd. of Ed. v. Piscataway Tp. Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978). The City does not dispute the legal arbitrability of these claims, but asserts that the officers' work hours did not increase. That argument goes to the merits of the grievance. Arbitration over an alleged breach of an agreement

concerning the deputy chief and captain's work hours and compensation would not substantially limit any governmental policy determinations. We will deny a restraint of arbitration over those issues.

ORDER

The request of the City of North Wildwood for a restraint of binding arbitration is granted to the extent the grievance challenges the summer change in work schedules of the deputy police chief and captain. The restraint is denied to the extent the grievance alleges a breach of an alleged agreement over work hours and compensation.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997