

P.E.R.C. NO. 78-36

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN LAKES PBA LOCAL  
NO. 150,

Petitioner,

Docket No. SN-78-12

-and-

BOROUGH OF FRANKLIN LAKES,

Respondent.

SYNOPSIS

In a scope of negotiations petition jointly filed by the PBA and the Borough, the Commission determined that the issue of the negotiability of overtime payment for police officers at a time and one-half rate for off duty job related court appearances was a required subject for collective negotiations. The Borough was thereby ordered to negotiate in good faith upon this issue with the PBA.

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Appearances:

For the Petitioner, Osterweil, Wind & Loccke, Esqs.  
(Mr. Richard D. Loccke, On the Memorandum of Law)

For the Respondent, Winne, Banta, Rizzi & Harrington, Esqs.  
(Mr. Joseph Basralian, On the Memorandum of Law)

DECISION AND ORDER

On November 21, 1977, the Borough of Franklin Lakes (the "Borough") and Franklin Lakes PBA Local No. 150 (the "PBA") jointly filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a particular matter in dispute between the Borough and the PBA was within the scope of collective negotiations.

The factual context in which the instant dispute arose is not complicated and is undisputed by the parties. During the course of collective negotiations for a 1977-1978 contract between

<sup>1/</sup> In the case of a jointly filed petition, as is the situation in this particular matter, the party contending that the disputed issue is within the scope of collective negotiations is referred to as the petitioner.

the parties, a question arose as to the negotiability and propriety of overtime payment (at a time and one-half rate) for job related off duty court appearances. The agreement which was executed by the parties on or about May 5, 1977, covering the period January 1, 1977 to December 31, 1978, provides for overtime at the time and one-half rate for all patrolmen and sergeants in times of emergency as such term is defined by statute, but is silent as to the overtime rate of pay for off duty court appearances.

The parties have agreed to be bound by the Commission's determination relating to the stipulated issue of the negotiability of overtime pay for municipal police officers at a time and one-half rate for job related court appearances, excluding those appearances which take place during their normal time of duty. Apparently the parties have agreed that the existing contract will be amended to provide for overtime pay at a time and one-half rate for appropriate court appearances, retroactive to January 1, 1977, if the Commission determines that such a contractual provision does not relate to an illegal subject for collective negotiations.

The Borough contends that in light of particular language within N.J.S.A. 40A:14-134 and 40A:14-135 it is evident that a public employer may only pay overtime at a time and one-half rate for emergency duty, as defined in N.J.S.A. 40A:14-134.<sup>2/</sup> Implicit

<sup>2/</sup> N.J.S.A. 40A:14-134 reads as follows: "'Emergency' as used herein shall include any unusual conditions caused by any circumstances or situation including shortages in the personnel of the police department or force caused by vacancies, sickness or injury, or  
(Continued)

in the Borough's argument is that criminal court appearances are not subsumed within the definition of emergency duty set forth in N.J.S.A. 40A:14-134. The Borough maintains that inasmuch as these court appearances are not emergency assignments and since time and one-half overtime payments can only be made in times of emergency, the phrase "additional compensation" in N.J.S.A. 40A:14-135 (relating to court appearances for police officers) can only refer to payment at the prevailing or "straight time" rate. The Borough refers to certain judicial support for its contention

2/ (Continued) by the taking of accrued vacation or sick leave or both, whereby the safety of the public is endangered or imperiled, as shall be determined within the sole discretion of the officer, board or official having charge of the police department or force in any municipality.

In any municipality in which the officer, board or official having charge or control of the police department or force has authority, in times of any such emergency to summon and keep on duty any paid members of the police department or force for a period or periods of time in excess of the hours of ordinary duty, the governing body may provide compensation for some or all of such emergency duty by any such policeman at his prevailing wage, or at a rate not in excess of  $1\frac{1}{2}$  times his prevailing hourly wage rate, which compensation shall be in lieu of any compensatory time off otherwise due for the emergency duty so compensated.

The governing body of the municipality may, if necessary, make emergency appropriations to provide funds for the payment of such compensation as provided by law." N.J.S.A. 40A-14-135 reads as follows: "The governing body of any municipality may, by ordinance, provide that whenever any member of the police department or force shall be required to appear before any grand jury or at any municipal, County, Superior or Supreme Court proceeding, except in a civil action, the time during which he is so engaged shall be considered a time of assignment to, and performance of duty. When such appearance occurs during the member's assigned duty hours, he shall suffer no loss in compensation. When such appearance occurs outside his assigned duty hours, he shall receive either compensatory time off from his regular duty hours or additional compensation."

that it cannot agree to provide for time and one-half overtime payments under the instant circumstances since there was no appropriate enabling legislation in existence. The Borough thus concludes that the matter at issue is an illegal subject for collective negotiations.

It is the PBA's position that the issue of rate of pay for overtime worked in off duty court appearances is a permissive subject of collective negotiations, since overtime payments clearly relate to terms and conditions of employment and since the statutes cited by the Borough do not make that practice illegal.<sup>3/</sup> The PBA contends that criminal court appearances outside normal duty hours are subsumed within N.J.S.A. 40A:14-134's definition of emergency circumstances. Alternatively, the PBA asserts that it is a basic principle of statutory interpretation that where a general statement is made and there is a narrower definition or specific provision set forth in a separate statute that

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<sup>3/</sup> All of the PBA's arguments appear directed at establishing that the instant issue is a required subject for collective negotiations, not a permissive subject. A required subject of negotiations is a matter which is a term and condition of employment and therefore a matter which must be negotiated if demanded by either party. N.J.S.A. 34:13A-5.3. An illegal subject is one which is outside the scope of collective negotiations because it would be illegal for the parties to negotiate concerning it. They do not have the authority to alter the subject matter through their collective negotiations. A permissive subject is one which is neither illegal nor required. Therefore, if a party chooses not to negotiate upon it, the other party cannot require that it be negotiated, but conversely, if it is raised the parties are permitted to negotiate upon it and reach agreement if they can, and that agreement, incorporated in the contract, is enforceable as part of the contract. In re Board of Education of the City of Trenton, E.D. No. 76-11, 1 NJPER \_\_\_\_ (1975) at footnote 1, pgs. 4-5 and In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER \_\_\_\_ (1977).

separate legislative expression should control the specific circumstance and not the generalized expression. Applying this principle to the present situation, the PBA submits that the State Legislature has determined that pursuant to the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq., public employers and employee representatives must negotiate concerning what a police officer will receive for off duty court appearances, i.e., compensatory time off or additional compensation, including overtime at a time and one-half rate.

After careful consideration of the parties' submissions, we conclude that the payment of overtime at a time and one-half rate relating to off duty court appearances is a required subject for collective negotiations. It is essentially uncontroverted by the parties that in the abstract, assuming that no legislation existed concerning any form of overtime compensation for court appearances, overtime pay is a required subject of collective negotiations, clearly relating to economic terms and conditions of employment. The Borough, however, argues that specific legislation, i.e., N.J.S.A. 40A:14-134 and 40A:14-135, when read together, proscribes overtime payment at a time and one-half rate for off duty court appearances, unless emergency circumstances exist as set forth in N.J.S.A. 40A:14-134. We do not agree.

The Commission, in a series of decisions,<sup>4/</sup> considered

<sup>4/</sup> See, for example, In re Local 195, IFPTE and Local 518, SEIU, P.E.R.C. No. 77-57, 3 NJPER 118 (1977), Appeal pending, App. Div. No. A-3809-76, In re State Supervisory Employees Association,  
(Continued)

the effect of the Chapter 123, Laws of 1974 amendments to N.J.S.A. 34:13A-8.1 on the scope of negotiations. As enacted originally, Section 8.1 stated that no provision of the Act shall "annul or modify any statute or statutes of this state."<sup>5/</sup> Subsequently, that was modified to provide that the Act shall not "annul or modify any pension statute or statutes of this state."<sup>6/</sup> As interpreted by the Commission, Section 8.1, as amended, is not a repealer of any statute. What it does do is make explicit that all terms and conditions of employment are required subjects of collective negotiations to the extent of the employer's legal authority to negotiate. Statutes which place restrictions on such authority must be respected, but only those statutes which set specific limitations may legitimately be claimed to limit the employer's authority to negotiate terms and conditions of employment. General statutes giving broad grants of authority to employers are not a shield to nor a limitation on the duty to negotiate.

The Commission does not find that the statutes cited by the Borough make it illegal for that public employer to negotiate time and one-half overtime payments for off duty court appearances for police officers. N.J.S.A. 40A:14-134 and 14-135 refer to issues

<sup>4/</sup> (Continued) CSA/SEA, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), Appeal pending, App. Div. Docket No. A-4019-76, In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER \_\_\_\_\_ (1977), and In re Rockaway Township Education Association, P.E.R.C. No. 78-12, 3 NJPER \_\_\_\_\_ (1977), Appeal pending, App. Div. Docket No. A-687-77.

<sup>5/</sup> P.L. 1968, Chapter 303.

<sup>6/</sup> P.L. 1974, Chapter 123.

relating to additional hours of work performed by police officers outside their normal duty hours, but these statutes may be easily differentiated. N.J.S.A. 40A:14-134 relates primarily to additional consideration that may be accorded to police officers for extra hours worked when an entire department, shift, bureau or division is affected because of shorthanded staff, general police emergencies, or special events requiring an increased work force. N.J.S.A. 40A:14-135 in contrast relates to particular police officers' off duty court appearances.<sup>7/</sup> The Commission

<sup>7/</sup> These statutes' legislative histories differ also. Pursuant to the adoption in 1966 of what became N.J.S.A. 40:47-12.13 the only right granted to a policeman called upon to perform overtime services was that granted by N.J.S.A. 40:47-17, now N.J.S.A. 40A:14-133, specifically the right to "a day off for each extra day so served by him." A police officer could not recover compensation in lieu of compensatory time off until the Legislature, by the enactment of N.J.S.A. 40:47-12.13, authorized payment of compensation "in lieu of any compensatory time off otherwise due for the emergency duty" at the policeman's "prevailing wage." N.J.S.A. 40:47-12.13 referred to both emergency duty by policemen and firefighters. This statute was repealed, effective July 1, 1971, by the enactment of Chapter 197, Laws of 1971, which revised the laws relating to fire and police departments, which now appear at N.J.S.A. 40A:14-1 et seq. In this 1971 statutory revision, N.J.S.A. 40A:14-134 related solely to compensation for emergency overtime worked by police officers but its substantive provisions were identical with those contained in N.J.S.A. 40:47-12.13. Shortly after the Appellate Division, in a November 1972 decision, New Jersey State Police Association and Mayor and Council of Irvington, 121 N.J. Super. 321 (1972) determined that the authorization of money to pay police officers overtime was limited by N.J.S.A. 40A:14-134 to payment on a straight time basis, the Legislature amended N.J.S.A. 40A:14-134 (effective August 9, 1972) so that it now authorizes municipalities to pay compensation to a policeman for overtime work, either "at his prevailing wage or at a rate not in excess of one and one-half times his prevailing hourly wage rate."

N.J.S.A. 40A:14-135's predecessor, N.J.S.A. 40:11-13.9, (enacted in September 1968) was the first statute that provided for either compensatory time off from regular duty hours or "additional compensation" for off duty grand jury proceedings or



concludes that a reading of these two statutes in pari materia with the New Jersey Employer-Employee Relations Act's requirement that a public employer and employee representative "shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment"<sup>8/</sup> mandates the conclusion that overtime at a time and one-half rate is a required subject for collective negotiations relating to both emergency situations, as broadly defined, and off duty court appearances.<sup>9/</sup> The phrase "additional compensation" in N.J.S.A. 40A:14-135, in the absence of an express proscription within that particular statute, clearly encompasses additional pay.<sup>10/</sup>

One further argument of the Borough warrants additional comment at this time. The Borough asserted that when N.J.S.A.

<sup>7/</sup> (Continued) off duty criminal court appearances (excluding Municipal Court appearances). This earlier statute was repealed by Chapter 197, Laws of 1971, effective July 1, 1971. N.J.S.A. 40A:14-135, which was identical to N.J.S.A. 40:11-13.9, was amended by Chapter 157, Laws of 1973 (effective June 1973) to include off duty Municipal Court appearances, shortly after a November 1972 Appellate Division decision, Kayne v. Mayor and Township Councilmen of East Paterson, 121 N.J. Super. 296 (1972), held that a Borough ordinance authorizing compensation to police officers for appearances in Municipal Court criminal matters was invalid as outside the scope of enabling legislation that only empowered municipalities to compensate police department members for the time spent in appearances before a Grand Jury or at any county, Superior or Supreme Court proceeding, except in a civil action.

<sup>8/</sup> N.J.S.A. 34:13A-5.3.

<sup>9/</sup> In light of the Commission's determination in this matter, it is unnecessary to determine whether certain or in fact all off duty court appearances may also be categorized as emergency situations within the intendment of N.J.S.A. 40A:14-134.

<sup>10/</sup> The Commission is not called upon at this time to determine whether parties may negotiate even higher rates of pay for off duty court appearances.

40A:14-135's predecessor was enacted (N.J.S.A. 40A:11-13.9)  
N.J.S.A. 40A:14-134's precursor (N.J.S.A. 40:47-12.13) provided  
overtime at straight time rates only. Therefore the Borough  
concluded that "additional compensation" thus referred to only  
compensation at the prevailing rate when N.J.S.A. 40:11-13.9 was  
first enacted. The Borough submitted that if the Legislature  
had intended to permit overtime compensation for court appearances  
at a time and one-half rate, by using the term "additional compensa-  
tion", after it had provided for time and one-half overtime payments  
for extra hours worked in emergency situations by amending N.J.S.A.  
40A:14-134, it would have explicitly set forth such a change of  
substance. The Commission concludes, however, that by reading N.J.S.A.  
40A:14-134 and N.J.S.A. 40A:14-135 together it is more logical to  
conclude, given the Borough's argument that the rate of compensation  
for off duty court appearances was directly related to the enabling  
legislation referring to overtime payments for emergency circum-  
stances, that the phrase "additional compensation" in N.J.S.A.  
40A:14-135 may now encompass overtime payments at a time and one-half  
rate.

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ORDER

With respect to the issue of the negotiability of over-  
time pay for municipal police officers at a time and one-half rate  
for off duty job related court appearances which we have hereinabove  
determined to be a required subject for collective negotiations, the

Borough of Franklin Lakes is hereby ordered to negotiate in good faith upon demand of the Franklin Lakes PBA Local No. 150.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hipp Hurwitz and Parcels voted for this decision. Commissioner Hartnett voted against the decision.

DATED: Trenton, New Jersey  
December 20, 1977  
ISSUED: December 21, 1977