

P.E.R.C. NO. 86-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN,

Petitioner,

-and-

Docket No. SN-85-86

FRANKLIN TOWNSHIP, NJ PBA LOCAL 54,

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially restrains binding arbitration of a grievance which the Franklin Township PBA, Local 154 has filed. The grievance alleges that the Township violated its collective negotiations agreement with the PBA when it required its police officers to work on days scheduled for training. The Commission holds that the grievance is not legally arbitrable to the extent it seeks to prevent the employer from replacing training while on duty with work while on duty, but is arbitrable to the extent it seeks increased compensation for this change.

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Appearances:

For the Petitioner, Lanigan, O'Connell & Chazin, P.A.
(Ellen O'Connell, of Counsel)

For the Respondent, Abramson and Liebeskind Associates
(Marc D. Abramson, Consultant)

DECISION AND ORDER

On April 8, 1985, the Township of Franklin ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks a restraint of binding arbitration of a grievance which Franklin Township PBA, Local 154 ("PBA") has filed. The grievance alleges that the Township violated its collective negotiations agreement with the PBA when it required its police officers to work on days scheduled for training. ^{1/}

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

^{1/} The PBA filed two related unfair practice charges. As will be seen, these charges were later settled.

The PBA is the majority representative of the Township's rank-and-file police officers. The Township and the PBA have entered a collective negotiations agreement effective from January 1, 1984 through December 31, 1985. That agreement's grievance procedure ends in binding arbitration.

The Township's police officers are paid annual salaries based on a "regular" work year of 2080 hours. The parties' collective negotiations agreement provides for overtime pay either after 40 hours per week or 2080 hours per year.

Each officer works a 4/2 shift (four days on, two days off). In order to bring total work hours to 2080, each officer also has 11 or 12 "training days" per year. These training days cover such topics as stress evaluation, exercise, crime scenes and car stops, survival training, boating safety, fire scene training, bomb unit training, and CPR and fire arm qualification. On training days, officers have generally worn civilian clothes, reported an hour later than usual, and left one to three hours earlier than usual.

At the beginning of this year, the Township assigned police officers to work on days scheduled for training. The PBA then filed a grievance seeking restoration of the previous training days and

extra pay (overtime) for work done on training days. The Township denied this grievance.^{2/}

The PBA demanded binding arbitration. The Township refused to arbitrate any issue except the overtime claims. This petition ensued.

Because two related unfair practice charges had been filed, this case and those two cases were consolidated for hearing. The Township then sought summary judgment on the negotiability of its work assignments on training days.

On July 15, 1985, Hearing Examiner Alan R. Howe conducted a hearing. He admitted certain stipulations and exhibits. He then granted the Township's motion for summary judgment, ruling that the Township had a non-negotiable prerogative to assign officers to work rather than training. The compensation claims, however, will be submitted to binding arbitration.^{3/}

On August 22, after having received an extension of time, the PBA filed exceptions. The PBA asserts that the change to work days from training days is mandatorily negotiable because it substituted duty time for duty-free time.

^{2/} An arbitrator had ruled, under a predecessor contract, that the Township owed certain police officers overtime for hours worked in excess of 2080 hours per year; the arbitrator included eight hours per day for each scheduled training day because the Township had the right, even though unexercised, to require employees to work a full day on training days. The arbitrator also recognized the Township's contractual right to reduce the number of training days.

^{3/} The PBA and the Township also settled the two unfair practice charges on the record.

On August 30, the Township filed a response. It asserts, in part, that training days are not duty-free time.

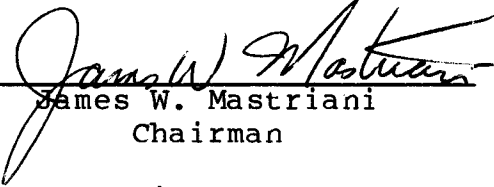
Applying the tests of City of Paterson v. Paterson Police PBA Local No. 1, 87 N.J. 78, 92-93 (1981), we believe the limited issue -- replacement of training time with work time -- predominantly involves the non-negotiable rights of the Township's police chief to make assignments necessary to deliver police services and to determine the training and development of the police force. Township of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982).^{4/} The Township was therefore not required to submit the propriety of this decision to binding arbitration, even though, as it concedes, the severable issue of compensation could be. Township of Franklin, supra. See also City of Newark, P.E.R.C. No. 86-52, 11 NJPER ____ (¶____ 1985). Accordingly, we will restrain binding arbitration over this decision.

^{4/} The reduction in the number of training days did not decrease duty-free time since the officers were in fact on duty for eight hours each training day. We distinguish this situation from training or in-service days which had been duty-free days. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 84-157, 10 NJPER 448 (¶15200 1984); Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-50, 9 NJPER 670 (¶14292 1980).

ORDER

The Township's request for a restraint of binding arbitration is granted to the extent the grievance contests the Township's decision to make work assignments on training days.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. Commissioner Hipp was opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
December 12, 1985
ISSUED: December 13, 1985