

P.E.R.C. NO. 94-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-93-93

LOCAL 788, INTERNATIONAL
ASSOCIATION OF FIRE FIGHTERS, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Local 788, International Association of Fire Fighters, AFL-CIO against the City of Camden. The grievance asserts that the employer violated the parties' collective negotiations agreement when firefighters assigned to special call overtime on Halloween, but released from the assignment mid-tour, were not paid for a full tour of duty. The Commission finds that this compensation claim is severable from the prerogative to increase and decrease staffing levels.

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Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys
(Regina Waynes Joseph, of counsel)

For the Respondent, Tomar, Simonoff, Adourian & O'Brien,
attorneys (Mary L. Crangle, of counsel)

DECISION AND ORDER

On April 19, 1993, the City of Camden petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by Local 788, International Association of Fire Fighters, AFL-CIO. The grievance asserts that the employer violated the parties' collective negotiations agreement when firefighters assigned to special call overtime on Halloween, but released from the assignment mid-tour, were not paid for a full tour of duty.

The parties have filed an affidavit, exhibits, and briefs. These facts appear.

Local 788 represents the City's uniformed firefighters. The parties entered into a collective negotiations agreement

effective from January 1, 1990 through December 31, 1992. Article V covers overtime. Paragraphs 1 and 2 of Section B provide:

1. Any approved work assignment which requires the presence of a Fire Fighter beyond his regularly scheduled tour of duty shall be considered as overtime.

2. Overtime shall be compensated for at straight time rates in accordance with the following schedule:

- 0-15 minutes - No compensation;
- 15-30 minutes - 1/2 hour compensation;
- 30-60 minutes - One (1) hour compensation and thereafter in one-half (1/2) hour segments for all time worked.

Section C provides:

In the event of a state of emergency declared by the Mayor or Acting Mayor, as a result of riot or other Civil disturbance, where in the opinion of the Business Administrator, or his designee, there is adequate time for marshalling forces, preference in call-up shall be given to Camden Fire Department Fire Fighters. In the event of such a call-up, the employees shall be guaranteed a minimum of four (4) hours straight time pay, but may be required to remain on duty for that four (4) hour period.

On Mischief night in 1991, the fire department experienced unprecedented levels of fire activity over a 14 hour period. It was the single busiest tour of duty in 122 years. The department responded to 133 incidents within 12 hours. Governor Florio issued a statement the next day noting the loss of property and the atmosphere of fear, and praising police officers and firefighters for their bravery.

Given the devastation on Halloween 1991, the City developed an operational plan for Halloween 1992. As part of the plan, Fire Chief Kenneth Penn issued a memorandum on October 30, 1992. That memorandum stated:

As outlined in the Mischief Night Operations Plan, the Department will inflate the staffing of all units on the Halloween Night tour to five (5) members upon apparatus that can accommodate seating; and four (4) upon other apparatus as appropriate.

The Department will operate the following units at the specified quarters throughout the fourteen (14) hour tour.

* * *

The strength of the fire control force will be eleven (11) engines, five (5) ladders, one (1) rescue, one (1) squad and six (6) battalion chiefs. Normal mutual aid will be used as necessary....

Roll call for the night tour shall be held at the normal 1800 hour period. All overtime for the night tour, however, shall begin being called at 1500 hours to expedite hiring. The vast majority of overtime personnel should be hired by 1700 hours whereby the first battalion will only have to fill last minute sick calls with additional overtime personnel. All additional apparatus and equipment shall be restored to reserve status following roll call on Sunday day tour.

Firefighters were given overtime assignments necessary to increase staffing levels. No emergency was declared. According to Local 788, firefighters were advised that the schedule would remain in effect throughout the 14 hour tour on Halloween night.

As Halloween evening progressed, Chief Penn determined that the expected amount of fire activity had not occurred. (In fact, the number of incidents was reduced by 95% from 1991). This apparently was a result, in part, of citizen patrols and support. Penn therefore determined that he could decrease the inflated levels and release some firefighters from special call overtime. Such releases appear to have been contemplated by the operational plan.

Every firefighter who served on special call overtime worked at least four hours and received at least four hours of pay. The employer, however, declined to pay the released firefighters for the full tour of duty.

Council 788 filed a grievance. The grievance asserted:

By order dated October 30, 1992, certain fire fighters were assigned to work a fourteen (14) hour overtime shift on October 31, 1992. These fire fighters however, were sent home after four (4) hours and denied the right to complete their work assignment previously approved and scheduled. This violates our contract and especially Article V.

Remedy sought: Eight (8) hours pay at the appropriate rate for each fire fighter affected.

Penn denied the grievance. He wrote:

In reviewing the subject contract and the specified Article, no violation can be found. The attached directive was issued as a contingency in anticipation of an emergency condition based upon the Department's experience during the night tour of 10/31/91. Such extraordinary fire activity during 1992 never materialized. Based on my own monitoring and assessment of conditions on 10/31/92, I found it appropriate to contact the Command Post at the

F.A.B. and down scale the level of inflated coverage to closer reflect a normal organizational strength. In doing so, the Fire Administration, however, retained the additional units on duty for the balance of the entire tour, in the form of specific reserve equipment. Consistent with the contractual agreement, it remains management's right to determine the number of fire units on duty. Pursuant to Article V, each member assigned for duty received the minimum required four (4) hours overtime pay. Grievance wholly without merit and herein denied.

Local 788 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, 154 (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.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the City may have.

The employer asserts that it has a prerogative to increase staffing levels to meet an emergency. Local 788 agrees and so do we. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Dkt. No. A-3329-79 (5/7/81). The employer

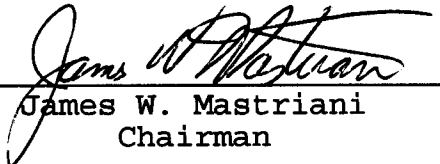
has a correlative right to determine when staffing levels may be safely decreased and officers may be released.

Local 788 asserts that the City contractually agreed to pay firefighters assigned to the 14 hour tour of duty for the full tour of duty, even if they were released earlier. This compensation issue is severable from the prerogative to increase and decrease staffing levels. See, e.g., City of Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Reg. H.S. Dist Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980); Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd App. Div. Dkt. No. A-4545-85T7 (3/23/87), certif. den. 108 N.J. 208 (1987). A public employer may legally agree that it will pay employees for a full tour of duty when they have put aside that time at the employer's request for the employer's purposes. Compare Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208 (1979) (employer agreed to pay overtime compensation to employees on standby during strike emergency); Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984) (proposal requiring minimum of eight hours of overtime pay for employees called in on day off is mandatorily negotiable). That the employer elects during the tour not to have the employees work during the whole tour does not negate the validity of any promise to pay for the full time initially assigned. Whether or not the parties had an agreement calling for payment is not within our power to decide. Ridgefield Park.

ORDER

The request of the City of Camden for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained from consideration.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993