

P.E.R.C. NO. 2000-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST MILFORD,

Petitioner,

-and-

Docket No. SN-2000-35

P.B.A. LOCAL NO. 162,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of West Milford for a restraint of binding arbitration of a grievance filed by PBA Local No. 62. The grievance alleges that the Township violated the parties' collective negotiations agreement by assigning more than three officers to a tactical patrol shift. The Commission holds that public employers are not required to negotiate about overall staffing levels or how many police officers will be assigned to be on duty at a particular time or deployed on a particular duty. The Commission finds that the employer's staffing determination is not legally arbitrable.

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, Courter, Kobert, Laufer & Cohen,
P.C., attorneys
(Fredric M. Knapp and Michael A. Shadiack, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Leon B. Savetsky, on the brief)

DECISION

On September 20, 1999, the Township of West Milford petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 162. The grievance alleges that the Township violated the parties' collective negotiations agreement by assigning more than three officers to a tactical patrol shift.

The parties have filed exhibits, briefs, certifications and supplemental certifications. These facts appear.

The PBA represents patrol officers, detectives and sergeants. The Township and the PBA are parties to a collective negotiations agreement effective from January 1, 1998 through December 31, 2000. The grievance procedure ends in binding arbitration.

The preamble of the parties' agreement provides, in part, that "no modification to the contractual language will be made by either party unless mutually agreed upon by both parties in writing." Schedule B of the agreement provides, in part:

The Chief has the right to maintain a traffic tactical/supplemental patrol assignment consisting of a maximum of three (3) officers to be filled on a voluntary basis.

Since January 1, 1994, police officers have worked 12 hour shifts. Normal shifts are 7 a.m. to 7 p.m. and 7 p.m. to 7 a.m. There are also two officers per shift who work from 6:00 p.m. to 6:00 a.m. and two officers who work from 6:00 a.m. to 6:00 p.m. to provide coverage for the shift changeovers. The tactical/supplemental detail operates from 2:00 p.m. to 2:00 a.m. The chief states that the tactical/supplemental patrol also covers the 7 p.m. changeover, but exists primarily to meet the higher levels of traffic offenses (accidents, speeding, DWI) and other calls (domestic disturbances, assaults at taverns) during those hours. The creation of the supplemental shift was mentioned in an interest arbitration award preceding the changeover to the 12-hour work shifts. The award provided that three officers would be assigned to the tactical/supplemental unit on a voluntary basis. Since it began, that detail has been staffed at times by two, three or four officers.

On May 28, 1999, the PBA filed a grievance protesting the assignment of more than three officers to the tactical patrol. It

requests removal of one officer. On June 2, Captain James Dykstra denied the grievance. He responded that four officers have been assigned to the tactical patrol since the start of the 12-hour schedule and that the PBA agreed to the fourth officer.

On June 30, 1999, the PBA demanded 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 this grievance or any defenses the parties may have.^{1/}

The scope of negotiations for police and fire employees 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. Compare Paterson PBA No. 1 v. Paterson,

^{1/} The parties' submissions discuss alleged agreements made during negotiations and interest arbitration proceedings. These contentions, supporting exhibits and certifications pertain to the merits of the grievance. Accordingly, we will not address those issues.

87 N.J. 78 (1981) with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson sets forth these negotiability tests:

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. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] 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 policymaking 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. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983).

The Township does not assert that any statute or rule is preemptive. We now determine if arbitration would substantially limit the Township's ability to make and implement policy.

Public employers are not required to negotiate about overall staffing levels or how many police officers will be

assigned to be on duty at a particular time or deployed on a particular duty. Paterson; Local 195, IFPTE v. State, 88 N.J. 393 (1982); Borough of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); Bergen Cty, P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. den. 88 N.J. 476 (1981). While, in general, the schedules to be worked by police officers are mandatorily negotiable, see In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997), a work schedule clause will not be enforceable if it substantially limits an employer from achieving its governmental policy objectives.

In Jersey City, P.E.R.C. No. 94-30, 19 NJPER 542 (¶24256 1993), the employer responded to a need to improve response to high crime rates and unanswered calls between 6:00 p.m. and 2:00 a.m. by creating a special unit. A grievance challenged the creation of the unit because it was alleged to contravene a contract clause providing that there would be three shifts. The special unit officers did not work longer hours. We restrained arbitration except as to any severable, negotiable issues such as bidding procedures for assignment to the new shift and compensation for such assignments.

The PBA acknowledges that the employer had a contractual right to operate the unit with a complement of three volunteers.

The grievance was filed after a fourth officer joined that detail. While that action changes the work hours of one officer, the PBA is challenging a staffing determination, not a unilateral alteration of the starting and ending times of a shift.^{2/}

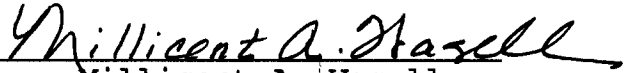
In South Brunswick Tp., P.E.R.C. No. 94-100, 20 NJPER 199 (¶25094 1994), we restrained arbitration over a grievance asserting the employer violated the agreement by raising by one the minimum staffing levels on patrol shifts. The analysis in that decision controls.

^{2/} Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd NJPER Supp.2d 97 (¶80 1981), does not apply. There, to make sure a patrol post was covered on Saturdays, the employer altered the work schedule from four days on, two days off to five days on, two days off. We declined to restrain arbitration over the change; the Court noted that the post could be covered by rotation under the 4-2 schedule instead of having the same officer at the post by changing his schedule to 5-2. NJPER Supp.2d at 99. The predominant issue was work schedules, not staffing.

ORDER

The request of the Township of West Milford for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Madonna abstained from consideration.

DATED: January 27, 2000
Trenton, New Jersey
ISSUED: January 28, 2000