

P.E.R.C. NO. 95-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF STATE POLICE),

Petitioner,

-and-

Docket No. SN-94-105

STATE TROOPERS FRATERNAL
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration over any claim that State Troopers are entitled to compensation exceeding compensatory time off at straight time rates because they worked on a holiday or were regularly scheduled to be off on a holiday. The claim arises from a grievance filed by the State Troopers Fraternal Association against the State of New Jersey (Department of Law and Public Safety, Division of State Police). The employer does not dispute that an allegation that an employee did not receive sufficient notice of a schedule change is mandatorily negotiable.

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Appearances:

For the Petitioner, Deborah T. Poritz, Attorney General
(Catherine M. Brown, Senior Deputy Attorney General;
Katrina F. Wright, Deputy Attorney General, on the briefs)

For the Respondent, Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

DECISION AND ORDER

On June 10, 1994, the State of New Jersey (Department of Law and Public Safety, Division of State Police) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of three grievances filed by the State Troopers Fraternal Association. The grievances concern the amount of compensatory time off or pay to be received by troopers working on a holiday or having their regular day off fall on a holiday.

The parties have filed briefs and exhibits. These facts appear.

The STFA represents State police officers in the ranks of Trooper, Trooper II, and Trooper I. The parties entered into a

collective negotiations agreement effective from July 1, 1990 through June 30, 1993. Article VI is entitled Time Off. Section B is entitled Holidays. It provides:

1. All troopers shall be entitled to the following holidays as additional days off without loss of pay or if worked, shall be compensated with compensatory time off:

- | | |
|-------------------------------|------------------|
| New Year's Day | Labor Day |
| Martin Luther King's Birthday | Columbus Day |
| Lincoln's Birthday | Election Day |
| Washington's Birthday | Veteran's Day |
| Good Friday | Thanksgiving Day |
| Memorial Day | Christmas Day |
| Independence Day | |

2. a. When the Governor grants a holiday which is in addition to the existing scheduled number of holidays, Troopers shall be granted such additional holiday, which shall be scheduled at the discretion of the Troop Commander or his designee.

b. In the event the Governor grants less than a day off, Troopers shall be granted an equal number of hours regardless of the assignment of the Troopers.

Article XXVII is entitled Non-Discrimination and prohibits certain types of discrimination. The contract also includes side letters. One side letter, dated May 11, 1987, provides that: "[a]ny schedule change or shift change which is effective on less than forty-eight (48) hours notice to the trooper shall cause the entire work obligation so changed to be paid at the overtime rate. Change shall be defined as an alteration from a regularly posted work schedule." This side letter also states that "[o]vertime compensation shall be paid in cash unless the trooper at his sole option elects compensatory time off." A second side letter, dated August 8, 1989,

changes the notice period from 48 hours to 72 hours. The grievance procedure ends in binding arbitration of contractual disputes.

Unless otherwise directed, troopers in the Criminal Enterprises Racketeering Bureau work Mondays through Fridays, 9:00 a.m. to 5:00 p.m. Troopers in the Criminal Investigations Section and the Intelligence Services Section, however, were assigned to a long-term detail requiring coverage seven days a week, 24 hours a day. Their work week consisted of two 13-hour days and one 14-hour day.

During the week of November 22-27, 1992, two "holidays" occurred -- Thanksgiving Day (November 26) and the next day, a day off pursuant to an executive order. Due to the coverage required by the long-term detail, some troopers were assigned to work on these two days and other troopers were scheduled for their regular days off. According to the employer, all these troopers were entitled to receive corresponding compensatory time off in the future, but they were not entitled to receive premium pay for working on a holiday or having a regular day off nor were they entitled to be credited with "holiday hours" during that week. Crediting troopers with "holiday hours" on November 26 or 27 would apparently have caused their work hours to exceed 40 hours for that week and thus would have entitled troopers to be paid at overtime rates -- that is, one and one-half times a trooper's regular hourly rate of compensation.^{1/}

^{1/} It appears that officers in the Intelligence Services Section were paid overtime during Thanksgiving week because they included "holiday hours" in their time sheets and their section supervisors forwarded their requests for overtime compensation without first checking with the Labor Relations Unit to see if payment was proper. By contrast, section supervisors in the Criminal Investigations Section denied requests for overtime compensation.

On December 9, 1992, the STFA filed a grievance asserting that the employer had violated Articles VI and XXVII and the side letters by denying troopers compensatory time off or cash at the premium rate. The grievance sought this relief:

Above bargaining unit members not specifically scheduled a "holiday" off (v regular day off) on Thursday 11-26-92 and not specifically scheduled a compensatory "holiday" off in its stead, or if scheduled to work on Thurs 11-26-92 & not specifically scheduled a compensatory "holiday" off in its stead as required by contract, to be credited with 8 "holiday" hours on Thurs 11-26-92 & compensated accordingly. Bargaining Unit members to be credited with 8 "X-Order" hours on Friday 11-27-92 and compensated accordingly.

Two similar grievances were filed in connection with Christmas Day 1992 and New Year's Day and Martin Luther King's Birthday in 1993. The three grievances were consolidated.

Captain Nicholas DeLuca conducted a Phase III Grievance Hearing. On July 15, 1993, he denied the grievance. He described STFA's claim as seeking premium compensatory time off or pay for troopers who worked on a holiday or had a regular day off and who were not given "sufficient notice that the holiday would be returned on a future date in the form of an alternate day off" and seeking credit for "holiday hours" in addition to their weekly work hours, thus resulting in overtime compensation for having worked more than 40 hours a week. He found that troopers were not entitled to notice that the holiday would be rescheduled on a future date or to overtime pay if such notice was not given. He therefore concluded

that personnel working on a holiday or having their regular day off scheduled on a holiday were entitled to a compensatory day off to be scheduled in the future, but nothing more, and that overtime compensation was not warranted since the troopers had not actually worked more than 40 hours during a week containing a holiday.

The STFA 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 cannot consider the contractual arbitrability or merits of these grievances.

The employer contends that N.J.A.C. 4A:3-5.8(b) prohibits it from granting overtime compensation because troopers worked on a holiday or had a regular day off and limits the maximum level of additional compensation to an hour of additional time off for each

hour actually worked or scheduled to be off.^{2/} We agree. In State of New Jersey, P.E.R.C. No. 86-16, 11 NJPER 497 (¶16177 1985), we held that the nearly identical regulation under the predecessor Civil Service Act preempted negotiations over an STFA proposal to compensate employees working on holidays at one and one-half times their regular straight time rates and to grant them eight hours compensatory time off as well. Thus, we will restrain arbitration to the extent the grievances claim that working on a holiday or having a regular day off on a holiday contractually entitles the trooper to compensation greater than compensatory time off for each hour worked or scheduled to be off.

In its brief, STFA does not dispute that N.J.A.C. 4A:3-5.8(b) preempts negotiations over such a claim. It adds, however, that it is still seeking the compensatory time off authorized by that regulation. The employer has not yet granted compensatory time off, but has indicated it will do so once the grievances are resolved.

STFA asserts that the employees who were required to work on holidays did not receive notice 72 hours before their schedules were changed and thus they are contractually entitled to receive

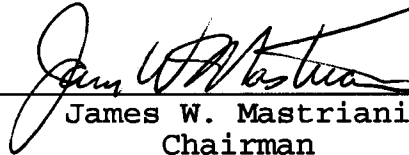
^{2/} N.J.A.C. 4A:3-5.8(b) provides: "Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday.... However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation."

premium pay for this alleged notice violation. See, e.g., Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984). This contractual claim is not preempted by N.J.A.C. 4A:3-5.8(b) because it does not turn on the fact that the employees worked on holidays as opposed to other days. Instead, it turns on the allegation that the employees did not receive sufficient notice of a schedule change. The employer does not dispute that such a claim is mandatorily negotiable. It asserts, however, that the notice claim was not raised earlier in the grievance procedure and thus cannot be pursued to arbitration. We do not have jurisdiction to entertain that contractual arbitrability defense. Ridgefield Park.

ORDER

The request of the State of New Jersey (Department of Law and Public Safety, Division of State Police) for a restraint of binding arbitration is granted over any claim that troopers are entitled to compensation exceeding compensatory time off at straight time rates because they worked on a holiday or were regularly scheduled to be off on a holiday.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Goetting abstained from consideration. Commissioner Wenzler was not present.

DATED: December 16, 1994
Trenton, New Jersey
ISSUED: December 19, 1994