

P.E.R.C. NO. 83-107

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MAYWOOD,

Petitioner,

-and-

Docket No. SN-82-31

MAYWOOD P.B.A. LOCAL 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance Maywood P.B.A. Local 102 filed against the Borough of Maywood. The grievance alleged that the Borough had failed to comply with contract clauses concerning overtime and seniority in determining which police officers would temporarily fill in on other shifts.

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Appearances:

For the Petitioner, Aron, Till & Salsberg, Esqs.
(Richard M. Salsberg, of Counsel, Stephen R.
Fogarty, on the Brief)

For the Respondent, Loccke & Correia, Esqs.
(Richard D. Loccke, of Counsel)

DECISION AND ORDER

On December 11, 1981, the Borough of Maywood ("Borough") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Borough seeks to restrain binding arbitration of a grievance which the Maywood P.B.A. Local 102 ("PBA") has filed. The grievance alleges that the Borough violated the collective negotiations agreement when on April 10, 1981 its Chief of Police issued the following order:

It is the objective of this department to maintain a (4) four man shift on each tour (Minimum). If your request for time off results in your shift having less than 4 men, the following will result:

Your request will be denied or;

You will arrange to change shifts with someone on a full shift; or

You will take a PH [Priority Holiday] and a man from a heavy [more than 4 man] shift will be moved to cover your absence.^{1/}

^{1/} The parties requested that the Commission assign a staff member to conduct a settlement conference. The conference did not result in an agreement.

The parties have filed briefs and exhibits. The Borough also filed a reply brief.^{2/} The following facts appear.

On April 29, 1981, the PBA filed a grievance challenging the Chief's order. The grievance generally alleged that the order denied police officers contractually agreed upon time off they had earned and changed their work schedules. The grievance specifically alleged that the order violated several contractual clauses, including the following clause entitled Priority for Overtime:

Overtime for regularly scheduled shifts and details will be offered to a regular full-time EMPLOYEE of the Department first, in an order of preference based upon a rotating volunteer roster, within rank. Said roster will include all men who desire to work overtime and have placed their name on said roster.

There may be certain situations in which the Department, because of special or other attributes of a particular officer, determines that it is the best interests of the Borough to bypass an EMPLOYEE or EMPLOYEES on the overtime list.

While this Agreement contemplates the possibilities noted in the above section, it is agreed and understood that such bypassed EMPLOYEE or EMPLOYEES must become next on the list for the purpose of the overtime roster.

The purpose of this section is to equalize overtime among volunteer EMPLOYEES referred to above and same shall not be defeated by the Borough's selection of special persons for special details as set forth herein.

The PBA sought a return to the status quo and compliance with the "priority for overtime" provision in order to replace absent police officers when the employer needed four officers on a shift.

^{2/} On March 24, 1982, the PBA filed a request for a hearing in this matter. Since the documents in the record fully address the issues and raise no substantial and material factual issues, we deny this request.

On May 5, 1981, the Chief of Police denied this grievance. He asserted that the grievance was untimely, that he had not violated the contract, that management had a prerogative to determine the staffing needs of the department, and that he had the sole right to determine when an emergency existed. In June, 1981, the Borough conducted a hearing on the grievance and then issued a decision denying it.^{3/}

On August 25, 1981, the PBA filed a demand for arbitration. The parties have agreed to stay arbitration pending this decision.

In its brief, the Borough gives the following description of the dispute:

The essence of the Borough's general order is the reservation of its right to insist upon a four man shift whenever the needs of the service so require. Implicit in that right is the decision of the Borough, irrespective of existing work schedules, to assign patrolmen to temporarily fill the department's manpower needs in the absence of an ill patrolman who is regularly scheduled to work on a particular four man shift.

The PBA, though conceding that the Borough may direct members of the department to work on shifts of duty other than or additional to the shift regularly assigned whenever the needs of the service so require, maintains that such assignments must be made on a "priority for overtime" basis; or, offered to a regular full-time employee of the department first, in an order of preference based upon a rotating volunteer roster, within rank. Not so.

The Borough concludes that it not only has a prerogative to determine the number of patrolmen to work on each shift, but also

^{3/} Of course, we express no opinion on the merits of the PBA's contractual claims or the Borough's defenses. Such questions are for the arbitrator. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.. 78 N.J. 144, 154 (1978).

a prerogative to reassign police officers to work on shifts of duty different from or additional to their regularly assigned shifts in order to meet its manpower requirements without complying with the contractual seniority and overtime provisions. The Borough further asserts that compliance with contractual overtime and seniority provisions would "...emasculate [its] ability to temporarily assign personnel to meet [its] emergency manpower requirements."

In its brief, the PBA demands compliance with the contractual provisions concerning time-off, allocation of overtime, and seniority when the Township wishes to fill a temporary vacancy on a shift as a result of illness or other circumstances.

The principles set forth in In re Township of Middletown, P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), appeal pending App. Div. Docket No. A-3664-81T3 ("Middletown") are applicable here. Middletown establishes that the Borough may determine as it has that there shall be at least four officers on each shift.^{4/} Middletown also establishes, however, that the Borough does not have a non-arbitrable right to determine -- despite negotiated provisions on time-off, hours of employment, priority holidays, vacations, and work schedules -- which police officers will fill in on other shifts when officers on those shifts are

^{4/} Despite the PBA's assertion that the Borough has not staffed its shifts at this particular level, it does not dispute the right of the Borough to make this staffing determination.

temporarily absent.^{5/} The Borough may legally agree that, as a general rule, it will use employees to temporarily fill in on a given shift in accordance with contractual seniority or overtime provisions. Middletown; In re Town of Kearny and Kearny PBA Local 21, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1979), aff'd App. Div. Docket No. A-1617-79 (December 18, 1981). If time limitations prevent the Borough from complying with the negotiated system for determining which officer works what hours and still meeting its manpower needs, it may exercise its reserved non-arbitrable right under such circumstances to make the necessary assignments despite the negotiated system. In re City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); In re Borough of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981).^{6/} This approach accommodates the interests of both the employer and the employees without placing any substantial limitations on the Township's policymaking powers: the Township can be assured that it will have a sufficient number of employees for each shift and that it will retain the right to determine

^{5/} As in Middletown, there is no issue concerning the relative qualifications of the officers selected to fill in temporarily on other particular shifts. Indeed, the contract specifically recognizes management's right to assign employees with special abilities, regardless of their position on the overtime lists.

^{6/} Under Long Branch and Pitman, the question of whether an employer has contractually agreed to pay increased compensation in the event it changes a particular shift assignment under such circumstances is severable from the exercise of any managerial prerogative and arbitrable. Should a dispute arise concerning the applicability of Long Branch and Pitman to a particular assignment, we would entertain another scope of negotiations petition on the basis of the specific facts associated with that dispute.

which employee to assign temporarily when special qualifications are needed for that assignment while the employees will have some say in determining their hours of work and compensation. See, Bd. of Ed. Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980); Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); and In re IFPTE Local 195 v. State, 88 N.J. 393 (1982). Accordingly, we decline to restrain arbitration.^{7/}

ORDER

The Borough of Maywood's request for a permanent restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch, Suskin, Hipp, Graves and Newbaker voted for this decision. None opposed.

DATED: Trenton, New Jersey
February 16, 1983
ISSUED: February 17, 1983

^{7/} Given the way the parties have framed the issues in this case, the Borough's right to set unilaterally a minimum manning level of four officers is not before us and thus we need not consider whether to restrain arbitration on that issue. We assume the arbitrator will likewise not question the Borough's minimum manning determination.