

P.E.R.C. NO. 89-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WHARTON,

Petitioner,

-and-

Docket No. SN-89-27

WHARTON BOROUGH F.O.P.,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of grievances filed by the Wharton Borough F.O.P. against the Borough of Wharton. The grievances allege that the Borough violated the parties' collective negotiations agreement when it directed detectives and patrol officers not to report for their scheduled shifts on contractual holidays and reduced their holiday pay. As the predominant issue is the alleged loss of compensation or scheduling of time off, the grievance is at least permissively negotiable and thus arbitrable.

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Appearances:

For the Petitioner, Ruderman & Glickman, Esqs.
(Mark S. Ruderman, of counsel)

For the Respondent, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On November 21, 1988, the Borough of Wharton ("Borough") filed a Petition for Scope of Negotiations Determination. The Borough seeks a restraint of binding arbitration of grievances which the Wharton Borough F.O.P. ("FOP") has filed. The grievances allege that the Borough violated the parties' collective negotiations agreement when it directed detectives and patrol officers not to report for their scheduled shifts on contractual holidays and reduced their holiday pay.

The parties have filed briefs and documents. These facts appear.^{1/}

^{1/} The Borough's request for an interim restraint of arbitration was granted in part and denied in part. I.R. No. 89-13, 15 NJPER 105 (¶20050 1989).

The FOP is the majority representative of the Borough's patrol officers and sergeants. The parties' collective negotiations agreement is effective from January 1, 1988 through December 31, 1989. The grievance procedure ends in binding arbitration.

Article 8, Holidays, provides, in part:

A. Each employee shall receive twelve (12) holidays per year. Compensation for these holidays shall be provided in accordance with the present practice....

B. If the holiday is not taken, unit members shall receive payment for the unused holiday at the straight time rate of pay in the last pay period in December of the year in which the holiday occurred.

The employer provides police protection 24 hours a day, seven days a week. Accordingly, an employee may be regularly scheduled to work on one or more of the contractually-recognized holidays. Prior to 1985, when an employee worked on a holiday, he or she was entitled to take off another work day as holiday compensation. Beginning in 1985, employees working on a holiday could take off a different day or receive payment for the unused holiday at straight time rates in the last pay period of that year as provided in Article 8 of the agreement.

On Memorial Day, July Fourth and Labor Day 1988, the Chief of Police told certain officers scheduled to work on one or more of those holidays not to report for work and to take the holiday off.^{2/} According to the FOP, the result of the order effectively

^{2/} It is unclear whether this practice continued after Labor Day. At the interim relief hearing, the FOP's counsel stated that it also occurred on Christmas and New Year's Day. However, the FOP has annexed memoranda from the Mayor and Council dated November 8 and 22, 1988, telling the Chief to stop directing officers scheduled to work on any remaining 1988 holidays to take those days off.

eliminated the cash payment as an optional method of holiday compensation and left the department staffed with only a single unit member on each holiday shift.

The FOP filed grievances on behalf of all unit members who would have worked, according to the regular schedule, on those holidays but who had been told not to work. The grievances were denied, the FOP demanded arbitration and this petition ensued.

The Borough asserts that it did not need the normal complement of patrol officers and detectives to be on duty on the holidays. It asserts a managerial prerogative to set staffing levels and to control assignments to premium pay shifts.

The FOP disputes that staffing concerns were behind the directives and asserts that the grievances are arbitrable because they involve holiday compensation. It states that the Borough is depriving employees of their contractual rights to determine which day they want to take off and to receive cash as holiday compensation in lieu of time off. It analogizes the dispute to one in which an employee reporting for his normal shift is sent home and required to draw on leave time in order to be paid. Both actions, the FOP contends, deprive the employee of being able to determine whether and when to use vacation or other paid personal leave.^{3/}

^{3/} The FOP relies on Little Falls v. PBA Local 173, App. Div. Dkt. No. A-2370-87 (6/27/88), affirming a Superior Court order confirming an arbitration award. The award found a contract violation when employees were directed to take off their unused 1985 holidays by a specific date and certain holiday dates were mandated.

The boundaries of the Commission's scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154; emphasis added]

Accordingly, we only determine whether the Borough could have legally agreed to arbitrate the grievance. We do not determine whether it had a contractual right to direct employees, scheduled to work holidays, to take the day off.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlined the steps of a scope of negotiations analysis for police and fire fighters.^{4/} The Court stated:

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

^{4/} 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 mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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 fire fighters, 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 fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy-making 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. [Id. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers.

This dispute is at least permissively negotiable. While staffing decisions can involve issues pertaining to governmental policy, this record shows that the Borough was simply trying to cut its labor costs. In a memorandum to an affected detective, the Chief states: "I have only been trying in good faith to cut down on the cost of monies involved at the end of the year which has been a

burden....^{5/} The Borough rearranged schedules to temporarily drop staffing below normal levels on holidays. An employer has the right to reduce its work force through layoffs to effectuate savings or reduce its level of services, but it cannot unilaterally reduce the amount of time retained personnel work. See Piscataway Tp. Bd. of Ed. v. Piscataway Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978).

The FOP's grievances were filed on behalf of employees who, if the Borough had followed its regular work schedule, would have worked on the holidays in question and would have been eligible for either cash or time off. Providing employees who are assigned to work in premium pay situations the choice of receiving time off or cash as compensation for working those special hours is mandatorily negotiable. State of New Jersey, P.E.R.C. No. 84-77, 10 NJPER 42 (¶15024 1983), aff'd App. Div. Dkt. No. A-2408-83T3 (2/8/85). On this record, we do not believe that providing this choice here (if the contract so requires) would substantially fetter governmental policy-making. As the predominant issue is the alleged loss of compensation or scheduling of time off, the grievance is at least permissively negotiable and thus arbitrable.

^{5/} This was not an instance of an employer having to rearrange an employee's work schedule to cover staff shortages or meet an emergent need. See Bor. of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981).

ORDER

The Borough of Wharton's request for restraint of binding arbitration is denied.



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioners Bertolino and Wenzler were not present.

DATED: Trenton, New Jersey
March 9, 1989
ISSUED: March 10, 1989