

P.E.R.C. NO. 97-149

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONROE,

Petitioner,

-and-

Docket No. SN-97-72

UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 1360,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Monroe for a restraint of binding arbitration of a grievance filed by the United Food & Commercial Workers Union, Local 1360. The grievance asserts that the Township violated the parties' collective negotiations agreement when it discontinued emergency medical service coverage on recognized holidays and instead relied on volunteer services. The Commission finds that the employer has made a decision to curtail operations on holidays and that the resulting reductions in overtime opportunities cannot be challenged through binding arbitration.

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.

P.E.R.C. NO. 97-149

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONROE,

Petitioner,

-and-

Docket No. SN-97-72

UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 1360,

Respondent.

Appearances:

For the Petitioner, Louis Rosner, attorney

For the Respondent, Spear, Wilderman, Borish, Endy, Spear
& Runckel, attorneys (Warren J. Borish, of counsel)

DECISION AND ORDER

On January 24, 1997, the Township of Monroe petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances filed by the United Food & Commercial Workers Union, Local 1360 on behalf of three emergency medical technicians employed by the Township. The grievances assert that the Township violated the parties' collective negotiations agreement when it discontinued emergency medical service coverage on recognized holidays.

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

Local 1360 represents the Township's white and blue collar employees except police officers, confidential employees,

managerial executives, professionals, craft employees and supervisors. The Township and Local 1360 are parties to a collective negotiations agreement effective from January 1, 1995 to December 31, 1996. The agreement's grievance procedure ends in binding arbitration.

The Township began providing EMT services in the late 1970's after experiencing difficulties in getting the local volunteer service to respond to emergency calls during the day on weekdays. The EMTs provide service Monday through Friday from 6:00 a.m. to 6:00 p.m. When the EMT crew is not fully staffed due to illness or vacation, coverage is provided only from 8:00 a.m. to 4:00 p.m. Coverage on nights and weekends is provided by volunteer ambulance services. These services also provide back up coverage for the Township during the regular work day and workweek.

The EMTs work a 40 hour workweek, as set forth in Article X of the parties' agreement. Article X provides, in part:

A. The basic work week before overtime shall be forty (40) hours.

B. All hours worked in excess of forty (40) hours per week, or on a Saturday, shall be compensated at the rate of one and one-half (1 1/2) the employee's hourly rate. All hours worked on Sundays or holidays, shall be compensated at double the employee's hourly rate, except that all work performed on the Friday after Thanksgiving shall be compensated at a two and one-half (2 1/2) times the employee's hourly rate i.e., holiday pay plus time and one half.

The EMTs receive holiday pay for certain holidays, without the necessity of working the holiday. If they work on a holiday, they

receive double time pay. If an EMT wanted to be off on a holiday, he or she would be required to use a vacation day and would then still receive double pay.

When the EMTs were hired, they were placed within the police department and were required to work holidays, as were other members of the police department. In early 1996, the Township transferred responsibility for the EMTs from the police department to a new emergency management department. The head of this new department decided that the volunteer service could provide emergency services on holidays and the three EMTs would no longer be scheduled to work on holidays. They would still receive holiday pay, but would no longer have the opportunity to work on holidays for additional pay.

Local 1360 filed grievances on behalf of the EMTs. The grievances were processed through the various steps of the grievance procedure and on April 26, 1996, Local 1360 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 cannot consider the contractual merits of the grievances or any contractual defenses the Township may have.

The Township asserts that the grievances challenge its non-negotiable decision to alter the times when it chooses to provide services. It acknowledges that its decision will eliminate the opportunity for employees to earn overtime by working on holidays, but maintains that the dispute is not arbitrable because those lost opportunities are tied to its decision to curtail services.

Local 1360 asserts that the Township's action affects employees' work schedules and their ability to earn overtime, which are both mandatorily negotiable terms and conditions of employment. It asserts that once work schedules are established, the Township is obligated to honor them.

While the result of the Township's action will affect overtime opportunities, that consequence is not severable from the employer's decision not to schedule overtime work on holidays and instead to rely on the volunteer service. As we said in New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492. (¶18181 1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988), an overtime allocation case:

[a public employer] retains the sole right to determine when its services will be offered, what work must be done, how many employees are needed to staff its operation, and what qualifications an employee must possess in order to work.

[13 NJPER at 495; emphasis added]

In City of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978), we held that the employer's decision to use paid firefighters during the day and rely primarily on volunteers at night allowed it to refuse to negotiate over the firefighters' work schedule proposal which provided that employees rotate through day and night shifts. Similarly in Belleville Tp., P.E.R.C. No. 94-111, 20 NJPER 241 (¶25119 1994), we restrained arbitration over lost overtime opportunities to the extent the alleged loss of overtime opportunities was caused by the employer's decision to eliminate stand-by service on weekends. See also Ridgewood Village, P.E.R.C. No. 95-65, 21 NJPER 126 (¶26078 1995).

The premium pay and work schedule cases relied upon by the union did not involve instances where an employer decided not to deliver a service with paid employees. Cf. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973) (negotiations over employee work schedule must occur within parameters of school calendar). Here a decision has been made to curtail operations on holidays. The resulting reductions in overtime opportunities cannot be challenged through binding arbitration.

ORDER

The request of Monroe Township for restraints of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997
Trenton, New Jersey
ISSUED: June 20, 1997