

P.E.R.C. NO. 97-115

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ELIZABETH,

Petitioner,

-and-

Docket No. SN-97-23

PBA LOCAL 4,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Elizabeth for a restraint of binding arbitration of a grievance filed by PBA Local 4. The grievance asserts that the City violated the parties' collective negotiations agreement when it deviated from the contractual procedure in allocating overtime assignments among patrol officers. The Commission finds that a public employer has a right to deviate from a negotiated overtime allocation system when necessary to protect the public interest. The City adequately established that the overtime detail calls for officers with specialized experience.

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, Genova, Burns, Trimboli & Vernoia,  
attorneys (Steven E. Trimboli, of counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, attorneys (Bruce D. Leder, of  
counsel)

DECISION AND ORDER

On September 25, 1996, the City of Elizabeth petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by PBA Local 4. The grievance asserts that the City violated the parties' collective negotiations agreement when it deviated from the contractual procedure in allocating overtime assignments among patrol officers.

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

The PBA represents the City's full-time police officers below the rank of sergeant. The unit represented by the PBA contains between 275 to 300 police officers, including detectives. The parties entered into a collective negotiations agreement

effective from January 1, 1994 through December 31, 1996. Article XXII refers to a revolving seniority list and requires that overtime be offered to employees "in rotation by seniority on a non-discriminatory and as equal a basis as possible."

In May 1996, the police director decided to implement a "high visibility narcotics detail" in four areas with heavy drug trafficking. The detail began May 13, 1996 and operated seven days a week from 6 a.m. to midnight. The detail was staffed by officers working either a ten hour or an eight hour tour. The ten hour tour corresponded to an officer's normal workday. The eight hour tour was an overtime assignment. All patrol officers were eligible for these assignments.

On June 6, 1996, the director determined that the patrols had been effective in suppressing drug trafficking, driving dealers and customers away from these areas, gathering intelligence for future narcotics operations, and increasing the safety of residents. He determined that the patrols should be reduced to four hour tours, to be staffed on an overtime basis by full-time narcotics squad officers and by other officers experienced in narcotics operations. After the change in operations, overtime from this detail was available to the eight narcotics squad officers and 17 others who were identified as suitable for the detail under its new format.

On June 11, 1996, the PBA filed a grievance asserting that the limits on the pool of officers eligible for the assignments

violated the overtime distribution article of the agreement. The City denied the grievance and the PBA demanded arbitration. This petition ensued.

The City maintains that it needs officers with special qualifications to operate the high visibility detail under its altered structure. The police chief's affidavit asserts that under the modified format, he decided that assignment to the detail would be limited to those officers having the greatest familiarity with narcotics enforcement. He says that he chose officers:

(1) whose work histories demonstrated an interest in narcotics suppression, (2) who had previously been assigned to one of the "mini-stations" operated by the police department throughout the City, (3) who had previously supplied the narcotics squad with drug-related intelligence on a voluntary basis, and (4) most importantly, who had participated in narcotics squad raids within the previous two years.<sup>1/</sup>

The PBA disputes the City's need to limit the pool of officers. Its president's affidavit maintains that during the initial phase of the detail, two uniformed police officers were assigned to a marked police car to patrol a specific area and did not become involved in any type of covert or undercover operations as the detail's main purpose was to advertise a police presence, i.e. "high visibility." He further asserts that for the most part, each team of two police officers was parked in their police car on a particular corner. The PBA president alleges that in the second

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<sup>1/</sup> The chief stated that police mini-stations are in high crime areas where drug activity is a regular occurrence.

phase of the assignment, the members of the detail have been asked to perform the same duties. Finally he asserts that some former members of the narcotics squad were denied overtime opportunities.

In a responding certification, the chief emphasizes that his "bottom-line" requirement for assignment to the detail is participation in narcotics squad raids within the previous two years and that any officer without that recent experience (which would give the officer familiarity with the current "players" in illegal drug traffic) was not eligible for assignment to the detail, even if satisfying the other three criteria.<sup>2/</sup>

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

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<sup>2/</sup> The PBA president's affidavit does not assert that the officers denied overtime had participated in narcotic squad raids within the previous two years.

The scope of negotiations for police officers and firefighters 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. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for issues involving firefighters:

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. 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute 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). In this case, preemption is not an issue so Paterson bars arbitration only if the agreement alleged would substantially limit governmental policymaking powers.

In City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982), we distinguished between a police department's prerogative to require employees to work overtime and its duty to negotiate over the allocation of overtime opportunities among employees. We added:

Even though the allocation of overtime is a generally negotiable subject, there are still specific limitations on negotiability designed to insure that the employer will obtain a sufficient number of qualified employees to perform the necessary overtime tasks. Thus, if an urgent situation necessitates that the police department meet its manpower needs without instant compliance with the negotiated allocation system, it has the reserved right to make the necessary assignments to protect the public interest. In re Borough of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981). Also, if an employer needs a particular employee with special skills and qualifications to perform a specific overtime task, it may order that individual to work the overtime and thus insure that its needs are met. In re Local 195 and State of New Jersey, 88 N.J. 383, 8 NJPER 13129 (1982). In addition, an employer may reject an employee's request to work overtime, despite a negotiated system distributing overtime on a voluntary basis, if that employee is unqualified or physically incapable of doing the required work. In sum, the allocation of overtime is a mandatory subject of negotiations, provided that the employer remains assured that it will be able to obtain enough qualified and physically sound employees to perform the tasks at hand. [Id. at 450]

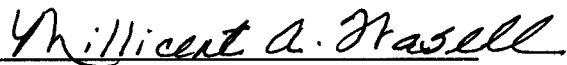
Long Branch remains good law. See, e.g., City of Camden, P.E.R.C. No. 94-63, 20 NJPER 50 (¶25017 1993). A public employer has a right to deviate from a negotiated overtime allocation system when necessary to protect the public interest. Hudson Cty., P.E.R.C. No. 93-37, 19 NJPER 3, 4 (¶24002 1992). We find that the

City has adequately established that this detail calls for officers with specialized experience and under our precedents a challenge to that determination is not legally arbitrable. We also note that the results produced by the detail in its first incarnation may have changed the nature and goals of the current detail.<sup>3/</sup> We disagree with the PBA that the assignments are akin to those in Bound Brook Bor., P.E.R.C. No. 91-103, 17 NJPER 309 (¶22136 1991); City of Hoboken, P.E.R.C. No. 89-95, 15 NJPER 253 (¶20103 1989) and Bound Brook Bor., P.E.R.C. No. 88-30, 13 NJPER 760 (¶18287 1987) as no need for specially-skilled officers was established in those cases.

ORDER

The request of the City of Elizabeth for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
 Millicent A. Wasell  
 Chair

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

DATED: March 26, 1997  
 Trenton, New Jersey  
 ISSUED: March 26, 1997

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<sup>3/</sup> The PBA president asserts, based on "information and belief," that officers remained parked on corners. The chief asserts, based on personal observation, that changes in the program were made in part because officers in radio cars had to respond to other calls during their shifts, thus reducing police visibility.