

P.E.R.C. NO. 92-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TETERBORO,

Petitioner,

-and-

Docket No. SN-92-42

P.B.A. LOCAL NO. 102 (TETERBORO
PATROLMEN'S BARGAINING UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by P.B.A. Local No. 102 (Teterboro Patrolmen's Bargaining Unit). The grievance contests the Borough of Teterboro's decision to enter into a contract with Bergen County by which the County would provide police coverage within the Borough from 11 p.m. to 7 a.m. each night for a seven month period. Under these circumstances, the Commission concludes that the Borough's decision to contract for County police coverage rather than to provide coverage by paying overtime or increasing its own workforce is neither negotiable nor arbitrable.

P.E.R.C. NO. 92-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF TETERBORO,

Petitioner,

-and-

Docket No. SN-92-42

P.B.A. LOCAL NO. 102 (TETERBORO
PATROLMEN'S BARGAINING UNIT),

Respondent.

Appearances:

For the Petitioner, Gatto & Low, attorneys
(Janice Gatto, of counsel)

For the Respondent, Alfred G. Osterweil, attorney
(Craig Kozan, of counsel)

DECISION AND ORDER

On October 10, 1991, the Borough of Teterboro petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 102 (Teterboro Patrolmen's Bargaining Unit). The grievance contests the Borough's decision to enter into a contract with Bergen County by which the County would provide police coverage within the Borough from 11:00 p.m. to 7:00 a.m. each night for a seven month period.

The parties have filed affidavits, exhibits and briefs.^{1/} These facts appear.

^{1/} The PBA was allowed to respond to the Board's reply certification. We deny its additional request for a hearing. We also deny its request to dismiss the petition as untimely. The Borough has made an untimely request for oral argument and to file an additional brief. We deny that request.

The PBA represents the four patrol officers in the Borough's police department. The Borough and the PBA entered into a collective negotiations agreement effective from January 1, 1990 through December 31, 1991. The grievance procedure ends in binding arbitration.

The Borough is industrial and has only 22 permanent residents. About 10,000 people work there Monday through Friday.

The police department is authorized by ordinance to have eight members: one chief, one lieutenant, two sergeants and four patrol officers. Before June 5, 1991, there were three shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. Given the Borough's industrial nature, at least two officers were scheduled during daylight hours.

Staffing shortages arose in 1991 when one retiring superior officer took accrued sick leave, vacation time, and terminal leave and when another superior officer became unavailable indefinitely due to illness. The Borough responded by creating a schedule rotating the four patrol officers and the last superior officer. The Borough asserts that having these five officers cover the three shifts resulted in overworking the employees and impairing their health and effectiveness. The Borough also asserts that personnel shortages had required it to pay large amounts of overtime to cover the 11:00 p.m. to 7:00 a.m. shift.

The Interlocal Services Act, N.J.S.A. 40:8A-1 et seq., authorizes local governing units to enter into contracts with any other local governing unit "for the joint provision within their

several jurisdictions of any services which any party to the agreement is empowered to render within its own jurisdiction."

N.J.S.A. 40:8A-3. Police protection is one such service. N.J.S.A. 40:8A-5.

On May 28, 1991, the Borough adopted an ordinance pursuant to the Interlocal Services Act. The ordinance directed the Borough's officers "to execute an agreement with the County of Bergen to provide for total/complete radio dispatcher police services to the Borough of Teterboro between the hours of 11:00 p.m. through 7:00 a.m. daily for a period effective May 15, 1991 or as soon thereafter as may be allowed by law to December 31, 1991." The ordinance also directed payment of \$4000 a month to the County for such services.

On June 5, 1991, the Bergen County Board of Freeholders adopted a resolution approving the execution of such an agreement. The resolution noted that the County had consistently rendered police services and assistance on an ad hoc basis and that the Borough was facing a serious personnel shortage due to vacancies.

On June 5, 1991, the Borough and the County entered into the contemplated contract. The agreement stipulated that the County would be responsible for the sole control and discipline of its police officers. The agreement called for the County to provide police coverage and "all supplementary police services and protection" from 11:00 a.m. to 7:00 p.m. each night.^{2/}

^{2/} The parties dispute the extent to which the County police department had assisted the Teterboro Police Department before the contract and the extent, if any, to which the Borough will save money because of the contract. We do not believe these factual disputes are material to deciding this petition.

The Borough notified the PBA that the County would provide complete radio dispatcher police services to the Borough from 11:00 p.m. to 7:00 a.m. daily and that the Borough's officers would work exclusively on the 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m. shifts. The notice stated that in accordance with the contract, the average basic work week for police officers would continue to be 37.1 hours based on a yearly total of 1,929 hours. No police officers have been laid off, but the PBA asserts that police officers have lost \$11,000 in scheduled overtime opportunities.

The PBA filed a grievance. It asserted that the Borough had violated articles in its collective negotiations agreement entitled Recognition; Grievance Procedure; Seniority; and Work Day, Work Week, and Overtime. It also alleged that the contract had been violated by using non-unit personnel to provide police services.

The Borough denied the grievance. The PBA demanded binding arbitration. An arbitrator was appointed and a hearing was held. At the hearing, the Borough asserted that the grievance was not legally arbitrable and asked the arbitrator to decide that issue before entertaining the merits. The arbitrator agreed. The Borough then filed this petition.

The Borough asserts that it has a managerial prerogative under Local 195, IFPTE v. State, 88 N.J. 393 (1982), to subcontract to have the County provide police services between 11:00 p.m. and 7:00 a.m.. The PBA responds that the Borough has not demonstrated a

need to enter this contract for reasons of health or economy; that this case predominantly involves its right to negotiate over work schedules and the preservation of unit work; and that the Interlocal Services Act did not mandate or authorize the instant contract.

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. [Id. at 154]

We thus cannot consider the merits of the grievance or the wisdom of the Borough's contract with the County. We also do not consider the validity of that contract under the Interlocal Services Act.

Arbitration in this case cannot be restrained unless an alleged agreement prohibiting the contract with the County would place substantial limitations on the Borough's governmental policy-making powers. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). Applying that standard, we conclude that arbitration must be restrained.

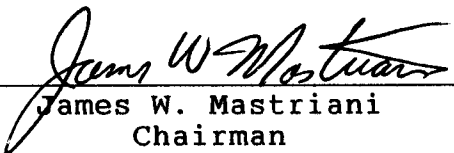
Patrol officers have an interest in preserving their unit work. The Borough has an interest in deciding how best to cover for absent superior officers. Here, the Borough eliminated overtime

opportunities for patrol officers created by a shortage of non-unit superior officers. Instead of patrol officers working overtime to cover for absent superiors, County police under contract patrol the 11:00 p.m. to 7:00 a.m. shift. This action has not resulted in any layoffs or reduced the number of weekly work hours below that specified in the contract. Police officers have lost overtime opportunities, but we do not believe under these facts that guaranteed overtime is a negotiable subject. Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). Under these circumstances, we conclude that the Borough's decision to contract for County police coverage on the 11:00 p.m. to 7:00 a.m. shift rather than to provide coverage by paying overtime or increasing its own workforce is neither negotiable nor arbitrable.

ORDER

The request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting and Grandrimo voted in favor of this decision. Commissioner Bertolino voted against this decision. Commissioner Smith abstained. Commissioners Regan and Wenzler were not present.

DATED: April 28, 1992
Trenton, New Jersey
ISSUED: April 29, 1992