

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WASHINGTON,

Petitioner,

-and-

Docket No. SN-99-91

TEAMSTERS LOCAL 866,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Washington for a restraint of binding arbitration of a grievance filed by Teamsters Local 866. The grievance alleges that the Township violated the parties' collective negotiations agreement when it did not call employees in the order specified by an on-call list to work during a snow emergency. Although the allocation of overtime opportunities among qualified employees is generally mandatorily negotiable, the Commission concludes that the Township had a managerial prerogative to deviate from established overtime arrangements to respond to an emergency as quickly as possible.

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. 2000-18

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Appearances:

For the Petitioner, Stanton, Hughes, Diana, Salsberg, Cerra & Mariani, P.C., attorneys (Richard M. Salsberg, of counsel and on the brief; Carmen J. DiMaria, on the brief)

For the Respondent, Maccarone & Farhi, attorneys (Joseph T. Maccarone, on the brief)

DECISION

On May 14, 1999, the Township of Washington petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Teamsters Local 866. The grievance alleges that the Township violated the parties' collective negotiations agreement when it did not call employees in the order specified by an on-call list to work during a snow emergency.

The parties have filed briefs and exhibits and the Township has filed a certification of the superintendent of the department of public works (DPW). These facts appear.

Local 866 represents all full-time blue collar employees in the DPW. The Township and Local 866 are parties to a

collective negotiations agreement effective from January 1, 1995 through December 31, 1997. Its grievance procedure ends in binding arbitration. The parties have agreed upon the terms of a new contract, but have not signed it.

Article 5 of the contract is entitled "Overtime." It set compensation rates for when overtime work is required, but does not specify any procedure for allocating overtime work. The parties have an informal call-out arrangement which has been in effect for many years. Two crews rotate working overtime during the winter months. Under this arrangement, one of the crews is on call in case inclement weather requires emergency overtime assignments.

An unexpected snowstorm began late on the night of April 9, 1998 and continued into the early morning of April 10. The public works superintendent, Ralph J. DeFranzo, did not take any action initially because weather reports had predicted rain with only a 20% chance of sleet mixed in.^{1/}

According to DeFranzo, he was contacted in the early morning of April 10 by the Township's police department advising

^{1/} A weather report from the Township's private weather service had predicted wet weather with light intermittent rain during the day on April 9, heavier amounts possible by afternoon and evening, and a 20% chance of sleet mixed with the rain late at night. According to the president of the weather service, even when the snow began to stick at 10:00 or 11:00 p.m., because of the warm pavement temperature, the service continued to advise its clients that no action was necessary.

him that two inches of snow had accumulated and the mountain roads had become hazardous. He then decided that emergency conditions existed. He called those DPW employees on the on-call list who lived the closest and could arrive most quickly. Some members of the on-call crew reported to work. He also called two members who were not on the on-call list, and a mechanic, because they all lived close by and could arrive quickly. He stated that in his judgment, the safety of Township residents would have been jeopardized if he had waited for on-call employees living further away to arrive.

A transcript of calls made to and from the police department indicates that a police officer called DeFranzo to advise him about poor road conditions. DeFranzo advised the police officer that the DPW was not going to do anything that night because he had been in contact with the weather service and the temperature was supposed to rise and the snow would melt. He also stated that he had had half of the town swept and he didn't want to spread anything on the roads if he didn't have to. In a later call to DeFranzo, a police officer reported several motor vehicle accidents. The officer told DeFranzo that the roads were treacherous and that other areas had sent crews out. DeFranzo stated that the Township would be the only one not to respond. After another motor vehicle accident, the police called DeFranzo again and advised him that there was approximately five inches of snow and that the police cars were having trouble getting around.

DeFranzo agreed to call in a mechanic to put chains on the police cars.

On April 20, 1998, Local 866 filed a grievance alleging that the Township violated the on-call arrangement by calling in two employees not on the on-call list.

On April 30, 1998, the DPW Superintendent denied the grievance. He wrote:

The basis of this grievance has nothing to do with Article 5, as indicated, since this contract does not govern any "snow policy regarding crew on calls". Therefore, there is no violation.

As we discussed, verbally, the rotating crew scheduling for the winter months is an informal arrangement that I instituted several years ago in an attempt to accomplish numerous goals. We have all agreed that this arrangement has worked very well for all parties. However, it must not be assumed that this call-out schedule is inflexible. It is meant to be a guide for planning purposes and scheduling. We all know that it is constantly changing and the changes are, mostly, created by the employees, not management. Basically, every employee that seeks and accepts a position with this department is told, before he is offered a job, that he will be expected to work any time, that this is the nature of the job and is fully expected. The simple answer is that we are all always "on call," and should be especially prepared during inclement weather conditions, when the likelihood of being needed increases, dramatically.

The conditions which dictated my decisions about calling out certain individuals during the early morning hours of Good Friday, April 10th, were already explained to you, however, I will restate them for the record. As we all know, there was no prior warning about potential snow accumulation for that date from our weather forecast service, or any other

known forecasts. Due to the date and prior weather conditions of that week, we had dismantled most of the sanders and our primary front end loader was out of service in the garage. Therefore we were not prepared for any normal sanding/plowing operation which would, normally, be undertaken by a scheduled call-out crew. The unexpected snow accumulated rapidly, after midnight, and as late as 11:30 PM our forecaster was still predicting it changing back to rain and melting. When our police reported accumulations of two or more inches on the mountain, I quickly reached out for those men that lived closest and could respond the quickest to the emergency, which included a request to mount tire chains on the police cars. I started with the on-call crew, but I deemed it best to get the two people from the other crew who could respond the quickest, especially since I anticipated no more than a four hour operation on the mountain, only. In summation, I will reiterate that these decisions will remain reserved as management prerogative, since they are emergencies and cannot be predicted.

On July 31, 1998, the Mayor denied the grievance. On October 23, Local 866 demanded arbitration. This petition ensued.

The Township contends that it had a managerial prerogative to deviate from the on-call arrangement because of the snow emergency. Local 866 disputes that the DPW superintendent was exercising his managerial prerogative when he called employees who were not on the on-call list. It asserts that had DeFranzo acted when first called by the police department, there would not have been an emergency and employees on the on-call list would have been able to respond and handle the situation before the snow

got worse. The Township responds that it does not lose its right to act in an emergency simply because it could have acted earlier.

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 do not consider the contractual merits of this grievance or any contractual defenses the parties may have.

The allocation of overtime opportunities among qualified employees is generally mandatorily negotiable. Wayne Tp., P.E.R.C. No. 97-74, 23 NJPER 42 (¶28029 1996), aff'd 24 NJPER 141 (¶29071 App. Div. 1998); 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); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). See also Town of West New York, P.E.R.C. No. 91-52, 17 NJPER 5 (¶22003 1990), aff'd NJPER Supp.2d 262 (¶217 App. Div. 1991). But an employer has a prerogative to make assignments necessary to meet the demands of emergencies and to protect the public. See Borough of Wallington,

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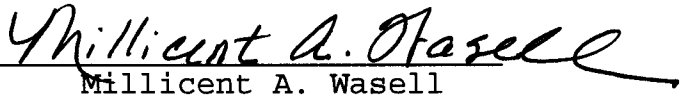
P.E.R.C. No. 98-162, 24 NJPER 155 (¶29169 1998); Borough of Maywood, P.E.R.C. No. 83-107, 9 NJPER 144 (¶14068 1983), aff'd 10 NJPER 79 (¶15044 App. Div. 1983); Long Branch, 8 NJPER at 450. See also Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983); Borough of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981).

A snow emergency required a call up of employees to plow and sand the Township's roads. The Township had a managerial prerogative to assign personnel needed to respond to that emergency as quickly as possible. An allegation of poor judgment as to when to call in employees for overtime in a snowstorm did not take away the Township's prerogative to make the necessary overtime assignments when the situation became emergent.

ORDER

The request of the Township of Washington for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: August 26, 1999
Trenton, New Jersey
ISSUED: August 27, 1999