

P.E.R.C. NO. 2003-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP,

Petitioner,

-and-

Docket No. SN-2003-20

MAINLAND PBA LOCAL NO. 77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Galloway for a restraint of binding arbitration of grievances filed by Mainland PBA Local No. 77. The grievances assert that the employer has restricted the number of employees who can be off duty or on leave on a given shift in violation of a negotiated agreement and the Township's minimum staffing policies. The Commission holds that scheduling of vacation leave or other time off is mandatorily negotiable, provided the employer can meet its staffing needs. The Commission does not determine whether the parties have agreed that up to four officers, rather than three, may be off on a given shift or whether the employer has denied requests for overtime on specific occasions. Those are issues reserved for the arbitrator.

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 & Vernioia, attorneys
(Sandro Polledri, of counsel)

For the Respondent, Schaffer, Plotkin, Waldman,
consultants (Myron Plotkin, on the brief)

DECISION

On October 7, 2002, the Township of Galloway petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances filed by Mainland PBA Local No. 77. The grievances assert that the employer has restricted the number of employees who can be off duty or on leave on a given shift in violation of a negotiated agreement and the Township's minimum staffing policies.

The parties have filed briefs and exhibits. The Township has filed the certification of police chief Keith Spencer. The PBA has filed the certification of police officer Joseph Picardi. These facts appear.

The PBA represents officers below the rank of sergeant in one unit and officers in the rank of sergeant and above in another unit. The parties' collective negotiations agreements are effective from January 1, 2001 through December 31, 2004. The grievance procedures end in binding arbitration.

There are approximately 56 officers in the department. Patrol officers work what is commonly referred to as a "Pittman" schedule. They work 12-hour shifts over a 28-day cycle as follows: two days on, two days off; three days on, two days off; two days on, three days off. There are four squads of nine officers. Departmental orders require a minimum of five officers on each shift and permit a maximum of three officers to be scheduled off during each shift. The police chief states that the department will occasionally permit a fourth officer to be off "under limited circumstances when there is a legitimate basis for the request."

If staffing levels fall below five, the field supervisor on duty contacts off-duty personnel to find an officer to fill the vacancy. Sergeants will be called back only if there is not a sergeant working or if no one in patrol is available for work. A General Order establishes procedures for shift swaps, vacation time, compensatory time, personal time and sick time. The requirements of the policy provide:

Days will not be juggled or otherwise changed. One-to-one exchanges would be allowed following the Shift Swap Policy.

Other than days off, no more than three officers on the same squad would be scheduled for the same vacation, comp, personal and training day off at the same time.

All time off is to be approved by the shift supervisor and so indicated on the work schedule in the patrol division.

All request slips for time off will be submitted up the line to the Division Commander, who will pass the slip to the Administrative Secretary who will maintain a record for each officer.

The sergeant in each squad will be responsible for the work schedule of the squad and will see that minimum manpower requirements are met for each shift.

Chief Spencer states that the department has found that the delivery of police services is enhanced when the minimum is exceeded and six or more officers are working on the same shift. The Township therefore attempts to keep six officers on duty to the extent possible. The chief explains that the Township has been divided into five geographic regions. He states that when a squad is staffed by six officers it is normally supervised by a sergeant or an officer-in-charge. When six officers are working, one officer is assigned to each of the five geographic areas and the sergeant or officer-in-charge supervises the squad. The chief believes that this is a practical, efficient method to carry out and supervise the day-to-day patrol functions.

Officer Picardi states that before 2001, there were eight officers on each squad and that as long as five officers were working on a shift, the remaining three officers were allowed to attend training or use leave time. If the three officers were off and additional officers were needed, officers would be called in on overtime. Picardi states that the then chief, Robert Hickman, increased the staffing levels on each shift to nine officers, but the orders pertaining to minimum staffing were not changed and the practice remained that as long as five officers were available, the remaining four officers could use leave time. Picardi states that when Hickman retired and Spencer assumed command, the administration began to deny officers' requests for leave based on an outdated policy that only allowed three officers to be off at any one time. He states that officers were denied vacation and personal leave and the opportunity for overtime.

In February 2001, the PBA filed a grievance on behalf of the rank and file contesting the actions of the department by which the "number of employees allowed off during any one shift results in more officers being on duty than the minimum staffing requirements call for, thus denying an officer time off." The grievance alleged that the denials of time off violated Article X, Vacations; Article XII, Leaves; Article XIII, Salary, Overtime, Longevity, Compensatory Time; and Article XX,

Continuation of Benefits Not Covered by this Agreement. The parties attempted to resolve the grievance. On August 13, the PBA's representative wrote to the Township. He stated that the policy had an adverse affect on the morale of officers and that officers were being denied requests for time off on an ongoing basis. He stated that the policy severely restricted the use of vacation, personal and Kelly leave. He proposed that the Township establish a minimum staffing policy that would clearly state the minimum number of officers that would have to be available to work a shift. Once that level is set, all other officers would be allowed to use vacation and other leave time as long as staffing requirements are met.

On August 24, 2001, the Township Manager denied the grievance. He stated:

I see no reason for this grievance due to the fact our Police Officers are allowed to take vacation, personal and Kelly time if so desired as long as our shifts are properly staffed. Additionally, in reviewing our procedures, I feel the safety and welfare of not only our Police Officers but, our residents are well served with this present method. Therefore, I deny this Grievance.

On August 29, 2001, the PBA demanded arbitration on behalf of both the rank-and-file officers and the superior officers. An arbitration hearing was scheduled and twice postponed, after which the employer filed this petition.

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 the grievance or any contractual defenses the employer may have.

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. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and 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. [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 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]

Because this dispute involves grievances, arbitration is 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).

The Township argues that the grievances are non-negotiable because they would limit its ability to establish minimum staffing levels and determine the level of police services. The Township also argues that the grievances interfere with its ability to determine the need for overtime work. The Township argues that its five officer minimum/three officer off model was adopted to ensure the availability of a "buffer" officer and respond to unanticipated personnel shortages and that public employers are permitted to exceed their absolute minimums to ensure adequate staffing levels. It states that since nine officers are assigned

and three are permitted to be off at any one time, officers have the opportunity to use their vacation and other leave time.

The PBA argues that the Township should have increased its minimum staffing level at the time the squads were increased to nine officers, or leave the minimum staffing at five and allow four rather than three officers to use leave time. The PBA states that it does not dispute the Township's right to set minimum staffing levels, but that once they are established, the Township must adhere to them and not modify them daily. The PBA contends that the Township has altered a term and condition of employment by using an officer as a "floater" and then using that officer in lieu of another officer who would have to be called in and paid overtime, thus denying officers' the opportunity to use their personal leave time and earn overtime pay.

The Township responds that since March 1999, it has gradually moved toward increasing staffing levels of its squads to nine officers. The Township further argues that the PBA has not provided any documentation or details concerning its claims that members have been denied leave time.

Scheduling of vacation leave or other time off is mandatorily negotiable, provided the employer can meet its staffing requirements. Pennsauken Tp., P.E.R.C. No. 92-39, 17 NJPER 478 (¶22232 1991); City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982), aff'd NJPER Supp.2d 141 (¶125 App. Div. 1984); Town

of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989); City of Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). An employer may deny a requested leave day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take leave even though doing so would require it to pay overtime compensation to a replacement employee. Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996); Town of Secaucus, I.R. No. 2000-6, 26 NJPER 83 (¶31032 1999); see also Town of Secaucus, P.E.R.C. No. 2000-73, 23 NJPER 174 (¶31070 2000). An employer does not have an inherent prerogative to unilaterally limit the number of employees on leave or the amount of leave time absent a showing that minimum staffing requirements would be jeopardized. Pennsauken; Logan Tp., I.R. No. 95-23, 21 NJPER 243 (¶26152 1995); Town of Kearny, I.R. No. 95-19, 21 NJPER 187 (¶26120 1995).


The present grievance falls within the boundaries established by these cases and is legally arbitrable. Permitting officers to take leave in numbers that do not compromise minimum staffing levels would not substantially limit governmental policymaking powers. We do not determine whether, as alleged by the PBA, the parties have agreed that up to four officers, rather than three, may be off on a given shift. Nor do we determine whether, and to

what extent, the PBA must document it claims that the employer has denied requests for time off on specific occasions. Those issues are reserved for arbitration.

ORDER

The request of Galloway Township for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani and Ricci voted in favor of this decision. None opposed. Commissioners Katz and Sandman were not present.

DATED: March 27, 2003
Trenton, New Jersey
ISSUED: March 28, 2003