

P.E.R.C. NO. 2004-25

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Petitioner,

-and-

Docket No. SN-2003-65

P.B.A. LOCAL 24,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Atlantic City for a restraint of binding arbitration of a grievance filed by P.B.A. Local 24. The grievance seeks overtime compensation for police officers whose work schedules were changed so they could receive firearms training. The Commission concludes that nothing in the record indicates that the payment of overtime compensation to affected employees would significantly interfere with the City's prerogative to train officers at certain times.

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, Obermayer, Rebmann, Maxwell Hippel, LLP, attorneys (Louis N. Magazzu, Jason E. Reisman, Jacob M. Sitman, on the brief)

For the Respondent, Szaferman, Lakind, Blumstein, Watter, Blader, Lehmann & Goldshore, P.C., attorneys (Sidney H. Lehmann and Kelly O'Neill-Côté, on the brief)

DECISION

On May 16, 2003, the City of Atlantic City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 24. The grievance seeks overtime compensation for police officers whose work schedules were changed so they could receive firearms training.

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

The PBA represents all uniformed police and detectives. The parties' collective negotiations agreement is effective from

January 1, 1996 through December 31, 2002. The grievance procedure ends in binding arbitration.

Article XXIV, Work Week, provides, in part:

At no time will the regular defined workweek consist of more than forty (40) hours per week or eight (8) hours per day. Any additional hours will be considered overtime and pay will be at the rate of time and one-half for that time. . . .

In no event shall an employee have a schedule changed which results in his loss of overtime unless an emergency is declared by the Director of Police in writing.

Article XXVI, Overtime, provides, in part:

Overtime shall consist of all hours worked in excess of the regularly scheduled shift or work performed on a scheduled day off. . . .

The Atlantic County Chiefs of Police Association adopted and the Atlantic County Prosecutor approved the Atlantic County Firearms and Use of Force Policy, effective January 1, 2002. The policy is designed to ensure that law enforcement officers in the County maintain a uniform firearms proficiency that meets statewide standards. It provides that officers can carry a firearm only if and when they have completed initial firearms qualification training and requalification training, when necessary. Requalification training is required semi-annually. The requalification training requires that officers achieve a minimum score on an approved firearms qualification course and that they are instructed by a certified firearms instructor. The

only qualifying range in the County is in nearby Egg Harbor Township and operates from 8:00 a.m. to 10:00 p.m.

Fifty officers are assigned to the midnight to 8:00 a.m. shift. The City states that in order for each officer to meet the training requirements, it must change the schedule of each member of the night shift for two days each year. The City thus alters, on a staggered basis, each officer's shift to start at 9:00 p.m. and end at 5:00 a.m. Officers thus report three hours earlier than usual on these two days. The City states that this alteration allows each officer to receive requalification training during the hours the range is open and during the course of each officer's eight-hour shift.

On December 9, 2002, the PBA filed a grievance seeking 2 1/2 hours overtime compensation for approximately 47 officers. The grievance alleges a violation of Article XXIV (Work Week).

The grievance was submitted to the Chief of Police. A handwritten note on the grievance states, "I concur with the PBA in this matter but refer the grievance to the City's labor counsel for determination." The Director of Public Safety then denied the grievance.

On January 8, 2003, the PBA demanded arbitration alleging "non-payment of overtime for firearms qualification and schedule change, including but not limited to violations of Article V

(Grievance Procedure), Article XXIV (Work Week), and Article XXVI (Overtime)." This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield 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 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. 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. . . . 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. [Id. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶1111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

The City argues that it has a managerial prerogative to change shift times for these employees to meet firearm requalification training requirements. The PBA concedes that the employer has a prerogative to require officers to receive firearm training during hours outside their normal shift. However, the PBA argues that the alteration of an employee's work schedule to

avoid the payment of overtime and the payment of overtime are mandatorily negotiable and legally arbitrable subjects.

The City replies that an employer's determination to temporarily change shifts to accommodate firearms training is a managerial prerogative and whether the employer changed the shifts to accommodate training is to be determined by the Commission not by an arbitrator. The City states that it fully compensated each officer whose shift was temporarily changed for the entire length of the temporary shift.

The PBA argues that the contract protects against work schedules being changed for the purpose of avoiding payment of overtime. As we stated in Camden Cty., P.E.R.C. No. 2003-54, 29 NJPER 34 (¶12 2003), that is a negotiable claim because it protects the employees' interests in negotiating over their work hours and does not interfere with any governmental policy interests. Reducing overtime costs is a legitimate concern, but not one that outweighs the employees' interests in enforcing an alleged agreement to preserve work schedules. See Woodbridge Tp., P.E.R.C. No. 2003-55, 29 NJPER 16 (¶4 2003) (union could arbitrate claim that employer was obligated to pay officers called in early for their full shifts, as well as for hours worked outside their regular schedules). See also Woodstown-Piles Grove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Piles Grove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980); Cumberland Cty.,

P.E.R.C. No. 97-116, 23 NJPER 236 (¶28113 1997) (commenting that labor cost issue alone did not make an existing work schedule not mandatorily negotiable); Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997); 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). We recognize that the employer contends that it did not change the work schedules to avoid overtime costs and that it instead did so to provide required firearms training. In this context, that argument is a contractual defense that can be considered by the arbitrator.

The employer's reliance on City of New Brunswick, D.U.P. No. 2001-8, 26 NJPER 462 (¶31181 2000), is misplaced. That decision of the Director of Unfair Practices held that the city had a managerial prerogative to change the work schedules of supervisors for about six months so they could attend community policing training. Accordingly, the Director declined to issue a Complaint based on an unfair practice charge challenging the schedule change. The Director noted, however, that the parties' grievance mechanism could be invoked to the extent the temporary schedule change implicated contractual rights including overtime. Such a contractual claim is being made here.

Nothing in this record indicates that payment of overtime compensation to affected employees would significantly interfere with the City's prerogative to train officers between 8:00 a.m




and 10:00 p.m. See Piscataway Tp. Bd. of Ed. and Piscataway Tp. Ed. Ass'n, 307 N.J. Super. 263 (App. Div. 1998), certif. den. 156 N.J. 385 (1998) (to be non-negotiable, impact issue must significantly or substantially encroach upon the management prerogative). Accordingly, we decline to restrain binding arbitration.

ORDER

The request of the City of Atlantic City for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: October 30, 2003  
Trenton, New Jersey  
ISSUED: October 30, 2003