

P.E.R.C. NO. 2003-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY,

Petitioner,

-and-

Docket No. SN-2003-6

CAMDEN COUNTY CORRECTION OFFICERS,
P.B.A. LOCAL #351

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Camden for a restraint of binding arbitration of a grievance filed by Camden County Corrections Officers, P.B.A. Local #351. The grievance alleges that the employer violated the parties' collective negotiations agreement by changing the work schedules of employee in the mailroom, information center, and visiting room from five days to seven days. The Commission concludes that a clause which provides that work schedules shall not be changed for the purpose of avoiding the payment of overtime is negotiable and enforceable because it protects the employees' interests in negotiating over their work hours and does not interfere with any governmental policy interests.

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, Howard S. Wilson, attorney, Counsel
to the Office of the Sheriff

For the Respondent, Law Offices of Stuart J. Alterman,
attorneys (Kendall J. Collins, on the brief)

DECISION

On July 18, 2002, Camden County petitioned for a scope of negotiations determination. The petition seeks a restraint of binding arbitration of a grievance filed by Camden County Corrections Officers, P.B.A. Local #351. The grievance alleges that the employer violated the parties' collective negotiations agreement by changing the work schedules of employees in the mailroom, information center, and visiting room from five days to seven days.

The parties have filed briefs and exhibits. The County has filed a certification and reply certification of its warden, David S. Owens, Jr. The PBA has filed a certification of its president, Doug Grundlock. These facts appear.

The PBA represents correction officers, correction sergeants and investigator sergeants. The County and the PBA are parties to a collective negotiations agreement effective from January 1, 1999 through December 31, 2002. The grievance procedure ends in binding arbitration.

Article V, Overtime, Section 9 provides that "no employee shall have his work schedule or regular day off schedule changed at any time for the purpose of avoiding payment of overtime."

The officer assigned to the information desk handles calls from the public, schedules visits by the public, and oversees the logbook for inmate and professional visits. This post was previously covered Monday through Friday on the 8:00 a.m. to 4:00 p.m. shift and Monday through Thursday on the 4:00 p.m. to 12 midnight shift.

The officer assigned to the visiting floor oversees inmate visitation. The officer controls the starting and ending time of the visits, monitors the behavior of the inmates and the public during visitation, and ensures that no contraband is introduced during visitation. This post was previously covered Monday through Friday on the 8:00 a.m. to 4:00 p.m. shift and Monday through Thursday on the 4:00 p.m. to 12 midnight shift.

The officer assigned to the mailroom accepts money for inmates to be placed on the books, releases personal property to inmates, and accepts court clothes. This post was previously covered Monday through Friday on the 8:00 a.m. to 4:00 p.m. shift and Monday through Thursday on the 4:00 p.m. to 12 midnight shift.

Officers have bid on these posts since 1994. When the jail population increased, two modular units were added which required expanding the hours of the visiting room, information desk and mailroom posts to include weekends. The officers assigned to these posts continued to work their Monday through Friday schedules and the weekend hours were covered by a variety of officers.

According to Warden Owens, he received an increase in complaints that officers working on weekends were inexperienced. He notified the PBA that he was changing the hours of these posts from five-day assignments to seven-day assignments. The notice was provided in November 2001, prior to the January 2002 bidding process. The warden states that he notified the PBA that the change was to increase efficiency and to respond to the complaints and that he notified the officers that they might want to reconsider bidding these posts since they would no longer have every weekend off, but only every third weekend.

According to PBA President Grundlock, at the time of the change, Owens gave no indication that these posts needed to be covered by experienced officers. Grundlock states that the warden's expressed concern was the amount of overtime on weekends, which Grundlock claims is due to poor staffing rather than the Monday to Friday schedule. He further states that overtime on the weekends is at an all-time high; senior officers are assigned to these posts; weekdays are the busiest time on the posts; the

present arrangement provides for "fill-in" officers to work during the busiest times; and public complaints have remained the same.

On November 26, 2001, the PBA filed a grievance alleging that the change in work schedules for these posts violated the contractual provision prohibiting shift changes to avoid overtime. On November 30, the Warden denied the grievance denying that the change was to avoid overtime and asserting that the changes were consistent with the employer's rights under the contract. On February 14, 2002, a departmental hearing officer denied the grievance, rejecting the claim that the only reason for the changes was to avoid overtime.

On March 1, 2002, the PBA demanded arbitration. This petition ensued. The arbitration proceeding has been postponed pending this scope determination.

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. 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 arises through 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). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

The County argues that permitting arbitration would substantially limit the County's governmental policy determinations. According to the County, the reason for the change was to provide better service to the public and inmate population.

The PBA argues that work schedules, allocation of overtime, and employee safety are all mandatorily negotiable and legally arbitrable subjects. It asserts that the County changed the schedules to avoid overtime. It further asserts that even if the County needed more experienced officers on weekends, the

solution to that problem is additional training, not a change in schedules.

The parties' contract states that work schedules shall not be changed "for the purpose of avoiding payment of overtime." That is a negotiable clause 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. Woodstown- Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove 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 better serve the inmates and the public. In this context, that argument is a contractual defense that can be considered by the arbitrator and that will protect the County's asserted interests if it is sustained.

ORDER

The request of Camden County for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: January 30, 2003
Trenton, New Jersey
ISSUED: January 31, 2003