

P.E.R.C. NO. 2003-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-2003-5

WOODBRIAGE TOWNSHIP POLICE
DEPARTMENT SUPERVISORY OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Woodbridge for a restraint of binding arbitration of a grievance filed by the Woodbridge Township Police Department Supervisory Officers Association. The grievance contests a change in work hours and compensation for sergeants called in to cover for lieutenants. The Commission concludes that the City's governmental policy interest in guarding against supervision gaps would not be substantially limited by paying officers for their regular shift, in addition to overtime for hours worked outside their regular schedules.

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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Respondent.

Appearances:

For the Petitioner, Genova, Burns & Vernoia, attorneys
(Kenneth A. Rosenberg, on the brief)

For the Respondent, Uffelman, Rodgers, Kleinle & Mets,
attorneys (James M. Mets, of counsel; Leonard C. Schiro,
on the brief)

DECISION

On July 18, 2002, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Woodbridge Township Police Department Supervisory Officers Association. The grievance contests a change in work hours and compensation for sergeants called in to cover for lieutenants.

The parties have filed briefs and exhibits. The Township has filed the certification of its police chief, William Trenery. The Association has filed the certification of its president, Lt. Donald J. Protz. These facts appear.

The Association represents sergeants, lieutenants and captains. The Township and the Association are parties to a collective negotiations agreement effective from January 1, 2002 through December 31, 2005. This grievance arose under the parties' prior agreement. The grievance procedure ends in binding arbitration.

Article XXXV is entitled General Order Regarding Scheduling #116 and covers issues relating to posting of vacancies, shift selection and temporary assignments.

On October 23, 1990, a memorandum was issued regarding shift commander hours. It stated:

Effective January 1, 1991 the Shift Commanders hours of work will be as follows:

SHIFT HOURS

FIRST SHIFT	0515 - 1540 hours
SECOND SHIFT	1445 - 0110 hours
THIRD SHIFT	1930 - 0555 hours

Due to the overlap in times for the Shift Commanders, they will be designated certain time periods in which they will have full responsibility for the shift. These times are as follows:

COMMAND HOURS

FIRST SHIFT	0530 - 1515 HOURS
SECOND SHIFT	1515 - 2000 HOURS
THIRD SHIFT	2000 - 0530 HOURS

In the absence of a Lieutenant, a Sergeant shall work the Shift Commanders hours. The relief Sergeant will be as follows:

FIRST SHIFT	0600 - 1615 HOURS
SECOND SHIFT	1615 - 0330 HOURS
THIRD SHIFT	THE SENIOR SERGEANT

Under this schedule, lieutenants and sergeants work three shifts. One lieutenant is assigned to each shift. One sergeant is assigned 0600 to 1615, one is assigned 0700 to 1715, and two are assigned 0845 to 2000. Two sergeants are assigned the afternoon shifts from 1615 to 0230 and from 1715 to 0330, and two sergeants are assigned the evening shift from 2000 to 0615. This scheduling provides for overlaps in shifts and allows lieutenants on each shift to serve together for a period of time. Members usually work ten hour and fifteen minute shifts with a 30 minute break. When a lieutenant is absent, a sergeant is assigned as tour commander. For instance, if the day shift lieutenant is out, the 0600 sergeant is assigned as tour commander and comes in at 0515. Likewise, if the evening lieutenant is absent, the senior sergeant on the evening shift is assigned as tour commander and reports at 1930. Before January 11, 2001, relief sergeants worked until the end of their regular shifts and received either overtime or compensatory time for the additional coverage time.

On January 11, 2001, a memorandum was issued to all personnel concerning shift commander hours. It states:

Attached is a memo dated October 23, 1990 regarding Shift Commander hours. This memo is still in effect and shall be adhered to. The memo outlines Shift commander's hours, hours of responsibility and the hours a Sergeant will work in the absence of a Lieutenant. The Sergeant assuming Shift Commanders duties will work the specified hours and will not stay to the end of his/her normal shift for overtime pay or compensatory time.

Association president Protz states that he met with the chief on January 12, 2001 and asked why a practice that had been in effect for many years was being changed. He states that the chief told him that the department had to cut back on overtime because the overtime budget was in danger of being depleted before the end of the year.

On January 17, 2001, the Association filed a grievance.

The grievance states:

Please consider this letter to be a formal grievance in response to Captain John Demarest's Patrol Division memo dated 11 January 2001 (attached).

As we discussed on Friday, 12 January 2001, the SOA desires to secure an equitable solution to the problem which we believe occurs as a result of this order. This problem is a matter of starting times for Shift Commanders (Lieutenants) and, in their absence, the starting times for Sergeants who replace the Lieutenants. A Patrol Division memo dated 23 October 1990 issued by then Captain William Trenery (attached) designates specific duty hours for First, Second, and Third Shift Lieutenants. Their starting times are 0515, 1445, and 1930 hours respectively. Relief Sergeants are designated as First shift (0600 hours), Second shift (1615 hours), and Third shift, the Senior Sergeant. Implied (and practiced) but not enumerated, is that in the absence of both the Lieutenant and the designated relief Sergeant, the Sergeant from the next available shift is brought in early to assume the Shift Commander's duties. That means that on the First Shift either the 0700 or 0945 hrs Sergeant is brought in early to start at 0515 hours. On the Second Shift either the 1615 or 1715 hrs Sergeant is brought in early to start at 1445 hrs. The Third Shift does not present a problem because the starting times for the Lieutenant and Sergeant are so close together. Clearly, the change in starting times for the Sergeants alter the schedule which they are on

and changes the shift on which they originally had bid.

In the current SOA contract Article XXXV covers "General Order Regarding Scheduling #116." Under the section titled "Manning and Shift Selection" the second paragraph reads:

Each member will select his/her steady shift based on the current Departmental Seniority List as it pertains in his/her Division. Each year, each member will be given the right to bid on a new shift or remain on the same shift.

An 0515 or 1445 hrs start is obviously not the shift any Sergeant has bid. As a result, while Sergeants have covered as Shift Commanders in many cases, they have worked through their normal tours of duty and have put in for overtime. This stems from the belief that when called in early before their normal shift or asked to stay beyond their normal shift, an excess of 10 hours 15 mins constitutes overtime. This has gone on for approximately the last four years and Sergeants have been compensated with either overtime or time coming with no problem. The memo of 11 January 2001 clearly orders a change in the above procedure. This memo ORDERS Sergeants who are "assuming Shift Commanders' duties will work the specified hours and will not stay to the end of his/her normal shift for overtime pay or compensatory time." The SOA submits that this memo violates Article XXXV of the current contract.

During our meeting of 12 January 2001, the subject of scheduling due to emergencies came up. This issue is addressed in Article XXXV under section "Temporary Assignments, first paragraph:

A member may not be required to work temporarily on any other shift, except when there is an emergency manning shortage on a specific shift.

The SOA submits that emergencies are just that - emergencies - unforeseen and often catastrophic. Not the result of vacations or illness.

As a remedy, the SOA seeks to maintain the current practice whereby Sergeants will work the shift they have bid. If required to come in before their normal hours or stay beyond their normal hours, they should receive overtime pay or compensatory time.

The grievance was not resolved and on January 28, 2002, the SOA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park 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 and fire employees 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 Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 88 (1981), with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson, at 92-93, outlines the scope of negotiations analysis for police 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.

Because the dispute involves a grievance, arbitration will be permitted if 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 (¶111 App. Div. 1983).

The Township argues that arbitration should be restrained because the grievance seeks to force it to keep officers on duty that it does not need and prohibits the Township from exercising its managerial prerogative to make staffing and supervisory decisions and to determine when overtime is necessary. The Township states that when both the lieutenant and relief sergeant were absent, there were supervision gaps that interfered with the department's ability to maintain discipline, deal with citizen complaints, and operate efficiently.

To avoid these gaps, sergeants were called in early to serve as shift commanders. However, the chief states that sergeants who came in early were not supervising the squads by the end of their regular shifts because the next shift commander and relief sergeant had reported for work. He found that the officers were engaged in socializing which was having a "deleterious effect on the Department." He determined that it was necessary for the officers to work only their normal 10 hour and 15 minute shifts, regardless of when they reported for work.

The Association counters that this case does not involve work schedules or staffing levels, but the issue of compensation for officers whose shifts have been altered by way of an early or late start. It agrees that the employer has the prerogative to determine whether to fill a vacancy, but once that determination is made the rate of pay and the duration of paid status is negotiable. The Association also maintains that there are many factual disputes in this matter and that it should proceed to arbitration. In the alternative, it requests an evidentiary hearing.

The Township responds that the Association's grievance relates to the Township's prerogative to change work schedules. It points to the language of the grievance, stating that the "SOA seeks to maintain the current practice whereby Sergeants will work the shift they have bid." The Township contends that it is only reassigning sergeants temporarily to fill in on shifts to

eliminate supervision gaps. The Township also maintains that there are no facts in dispute to warrant an evidentiary hearing.

Work hours and work schedules are mandatorily negotiable, but a particular work schedule issue may not be legally arbitrable if the facts demonstrate that arbitration would substantially limit a governmental policy determination. See, e.g., Town of Irvington v. Irvington PBA, Local No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif den. 82 N.J. 296 (1980) (need for supervision and improved discipline on night shift made shift change non-negotiable); City of Millville, P.E.R.C. No. 2003-21, 28 NJPER 418 (¶33153 2002) (staffing, supervision, and fatigue concerns justified a mid-contract schedule change); City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997) (need for command presence of deputy chief and captain on summer weekends made work schedule change non-negotiable). Further, an employer has a prerogative to decide whether to fill a vacancy or require overtime. Paterson; City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982).

The PBA now seeks to arbitrate a claim that the Township is obligated to pay officers called in as shift commanders for their full shifts, as well as for hours worked outside their regular schedules. That is the question we address, even though the initial grievance may have sought to prevent the Township from changing the sergeants' regular work schedules. Compare Paterson State-Operated School District, P.E.R.C. No. 2002-75, 28 NJPER 259

(¶33099 2002); City of New Brunswick, P.E.R.C. No. 97-141, 23 NJPER 349 (¶28162 1997) (addressing arbitrability questions as framed in union briefs and holding that whether such questions were properly raised at the grievance stage were contractual arbitrability issues for the arbitrator or the courts).

The City's governmental policy interest in guarding against supervision gaps would not be substantially limited by paying officers for their regular shifts, in addition to overtime for hours worked outside their regular schedules. Compare North Wildwood (City had prerogative to require that deputy chief and captain work on summer weekends, but officers could arbitrate claim for additional compensation for alleged increase in work hours). Moreover, enforcement of the alleged obligation would not substantially limit the City's ability to institute measures to address socializing by sergeants at the end of their shifts. Compare Pascack Valley Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 99-104, 25 NJPER 295 (30124 1999) (no prerogative to reduce full-time positions to part-time where that was not the only way to address coverage problems resulting from absences). And to the extent the City seeks to reduce overtime compensation, as the PBA contends, that labor cost concern may be addressed in future negotiations but does not justify disregarding an agreement the PBA alleges. See 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) (denying restraint of arbitration of

grievance seeking to enforce agreement to have regular weekend work performed by senior full-time employees at overtime rates rather than other employees at straight-time rates); State of New Jersey, P.E.R.C. No. 2001-71, 27 NJPER 276 (¶32100 2001); Cumberland Cty., P.E.R.C. No. 97-116, 23 NJPER 236 (¶28113 1997) (labor cost issues did not make work schedule proposals not mandatorily negotiable).

The City argues that enforcement of the alleged agreement would interfere with its ability to reduce staffing levels when it determines that the need for additional supervision has ended. See City of Camden, P.E.R.C. No. 94-62, 20 NJPER 48 (¶25016 1993) (employer had prerogative to increase staffing levels to meet an emergency and a correlative right to determine when staffing levels may be safely decreased and officers released). However, the prerogative to increase and decrease staffing levels is severable from the issue of compensation for alteration of officers' regular work schedules. See, e.g., City of Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Camden.


A public employer may legally agree to pay employees an amount in excess of time worked when they have put aside time at the employer's request for the employer's purposes. Compare Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208 (1979) (employer agreed to pay overtime compensation to employees on standby during strike emergency); Camden (union may arbitrate grievance alleging agreement to pay employees for a full tour of

emergency duty even if they were released early); Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984) (proposal requiring minimum of eight hours of overtime pay for employees called in on day off is mandatorily negotiable, as is proposal requiring minimum of two hours overtime if called in on a work day during off-duty hours). Consistent with this case law, the PBA may seek to enforce an alleged agreement to maintain the pre-2002 compensation arrangement with respect to sergeants called in to fill in for lieutenants, even if the Township chooses to release them before the end of their scheduled shifts. We note that, unlike Camden, where additional firefighters were scheduled in anticipation of a level of fire activity that did not occur, sergeants who work out a full tour would presumably be available to perform their regular duties after they no longer had to function as shift commanders.

ORDER

The request of the Township of Woodbridge 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

