

P.E.R.C. NO. 2005-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SADDLE BROOK,

Petitioner,

-and-

Docket No. SN-2004-062

P.B.A. LOCAL NO. 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Saddle Brook for a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 102. The grievance seeks overtime compensation for police officers temporarily assigned to a special shift. The Commission concludes that arbitration of this grievance seeking overtime compensation for employees who had to work outside their contractual work hours would not substantially limit the Township's governmental policymaking powers.

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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P.B.A. LOCAL NO. 102,

Respondent.

Appearances:

For the Petitioner, Dorf & Dorf, P.C., attorneys
(Gerald L. Dorf, of counsel; Christopher J. Vaz, on the
brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Michael A. Bukosky, on the brief)

DECISION

On April 20, 2004, the Township of Saddle Brook petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 102. The PBA seeks overtime compensation for police officers temporarily assigned to a special shift.

The parties have filed briefs and exhibits. The Township has filed the certification of the police chief.^{1/} These facts appear.

^{1/} The PBA requested the Township's reply brief be stricken and/or that an evidentiary hearing be granted. On June 22, the Chairman denied the request, finding no basis to strike the reply brief or need to have an evidentiary hearing.

The PBA represents all full-time law enforcement personnel, excluding the chief and deputy chief. The parties' collective negotiations agreement is effective from January 1, 2002 through December 31, 2004. The grievance procedure ends in binding arbitration.

Article IV is entitled "Management Rights." It gives the Township the right to manage the affairs of the police department and direct the working force and department operations.

Article VIII is entitled "Regularly Scheduled Hours of Work." It provides, in part:

Section 1.

The practice of the Township Police Department as of the date of this Agreement concerning the annual number of regularly scheduled hours of work shall continue. The starting and ending hours of shift work and rotation of hours of duty shall be continued except as that practice is expressly changed by this Agreement.

Section 2.

Uniformed Employees engaged in continuous shift operations shall start and end work at the following times; subject to Director of Public Safety and Chief of Police (N.J.S.A. 40A:14-132):

| <u>Shift</u> | <u>Start</u> | <u>End</u> |
|--------------|--------------|----------------|
| 1st | 8:00 A.M. | 4:00 P.M. |
| 2nd | 4:00 P.M. | 12:00 Midnight |
| 3rd | 12 Midnight | 8:00 A.M. |

Article IX is entitled "Emergency Overtime." It provides that employees shall be required to work emergency overtime and that such overtime shall be compensated at time and one-half the normal pay rate.

On September 18, 2003, the police chief implemented special plainclothes assignments in response to vandalism at St. Mary's Cemetery. The assignments were from 8:00 p.m. to 4:00 a.m. His memo to superior officers stated:

Due to the aggravated offense of the St. Mary's Cemetery desecration that occurred this date, personnel have been re-assigned from their regular tours of duties to the special assignments as scheduled (see attached).

The special assignment memo to five officers stated, in part:

This detail is of priority due to the aggravated offense and you are to engage your duties with strict diligence. All respective personnel have been re-assigned from their regular assigned tours of duties to the special assignment as follows. . . .

On September 25, 2003, two officers were reassigned to the cemetery surveillance detail from September 26 through October 3. On September 29, another incident was reported at the cemetery. On October 1, the deputy chief temporarily assigned additional officers to the surveillance detail from 7:00 p.m. to 3:00 a.m. for the month of October. The surveillance detail ended on November 4.

On September 22, 2003, the PBA filed a grievance alleging that the temporary reassignments violated the work hours and overtime provisions of the parties' agreement. The grievance seeks overtime pay for all hours worked outside the officers' regular schedules.

On October 8, 2003, a captain denied the grievance at step one. He stated that the special assignment did not fall under the scope of Article VIII. On November 13, the mayor denied the grievance at step two. He stated that the grievance was not properly filed, the parties' contract gives the Township the right to direct the working force and department operations, and the cemetery surveillance detail falls within the chief's authority under Article VIII. The mayor also stated that the public interest, welfare and public policy of the State and Township outweigh any of the provisions of Article VIII.

On November 18, 2003, the PBA demanded arbitration. This petition ensued.

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 defense the Township may have, including whether the grievance was properly filed.

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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]

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 alleged agreement is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

The Township argues that it had a prerogative to temporarily establish a special assignment/shift and to reassign the most qualified officers to that shift to stop the vandalism. The Township maintains that no overtime procedures were triggered and that it cannot be obligated to pay overtime for work performed as part of a special assignment during a regular work shift.

The PBA does not challenge the Township's right to establish assignments or the chief's determination to establish temporary details. It argues, however, that this case involves the question of whether overtime should be paid to the officers assigned to work in the cemetery during times outside their usual work hours and whose family obligations and personal lives were interrupted. The PBA asserts that rather than call in officers on overtime, the chief determined to change their schedules to avoid paying overtime.

The Township replies that its right to create the temporary surveillance shift is not severable from the overtime issue and

that having officers work a regular tour of duty followed by a second full shift would be hazardous.

The employees' primary interest is in receiving overtime compensation for work in addition to or outside their regular work hours. The employer's primary interest was in ordering the special assignments to respond to the cemetery vandalism. We have assessed similar interests in a case with similar facts.

In City of Newark, P.E.R.C. No. 86-150, 12 NJPER 542 (¶17202 1986), two police officers who regularly worked from 9:00 a.m. to 5:00 p.m. and one who regularly worked from 4:00 p.m. to 12:00 midnight were assigned to work a 6:00 p.m. to 2:00 a.m. shift as decoy prostitutes. The union conceded that the city had a right to change the officers' shift assignments temporarily, but filed a grievance seeking overtime compensation for each employee. We held that overtime compensation has been repeatedly found to be mandatorily negotiable. Having to pay extra compensation pursuant to a negotiated agreement does not prevent the employer from being able to assign employees to the extra duties it needs to staff. Accordingly, grievances seeking overtime compensation for working outside a regularly assigned shift are legally arbitrable.

Many of the City's arguments are contractual. They can be considered by an arbitrator. It does not appear that paying overtime would require officers to work two full shifts. We

conclude that arbitration of this grievance seeking overtime compensation for employees who had to work outside their contractual work hours would not substantially limit the Township's governmental policymaking powers.

ORDER

The request of the Township of Saddle Brook for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: August 12, 2004
Trenton, New Jersey
ISSUED: August 13, 2004