

P.E.R.C. NO. 2005-35

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-2004-065

PARK POLICE OFFICERS  
FOP LODGE 76,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the County of Camden for a restraint of binding arbitration of a grievance filed by Park Police Officers FOP Lodge 76. The grievance alleges that the police chief violated the parties' collective negotiations agreement when he issued a directive limiting the use of accumulated leave time to one officer per shift and then applied that directive to deny a request for a vacation day. The Commission grants a restraint to the extent the grievance, if sustained, would automatically entitle two officers per shift to take leaves regardless of the County's ability to meet its minimum staffing level for a shift through other methods such as offering overtime compensation to a replacement employee. The request for a restraint is otherwise denied.

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, M. Lou Garty, County Counsel  
(Catherine Binowksi, Assistant County Counsel, on the  
brief)

For the Respondent, Markowitz & Richman, attorneys  
(Stephen C. Richman, on the brief)

DECISION

On April 26, 2004, the County of Camden petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Park Police Officers FOP Lodge 76. The grievance alleges that the police chief violated the parties' collective negotiations agreement when he issued a directive limiting the use of accumulated leave time to one officer per shift and then applied that directive to deny a request for a vacation day.

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

The FOP represents park police officers, excluding captains and the chief. The parties' collective negotiations agreement is effective from January 1, 2002 through December 31, 2005.

Article XIII is entitled Grievance Procedure. Subsection 3 of Section A states: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." The grievance procedure ends in binding arbitration.

Article X is entitled Vacations. It states the number of vacation days employees may earn and accumulate and the procedure for requesting vacation leave. Section 2 provides that "[t]he scheduling of all vacations is subject to the approval of the employee's immediate supervisor."

The number of park police was recently reduced from 40 to 27. Shift complements now consist of five officers per shift. The minimum level of officers per shift has remained at four.

Before the staffing reductions, two officers per shift were allowed to take vacation leave at the same time. On January 31, 2004, the department issued a directive limiting the number of officers who could use accumulated leave time to one officer per shift. According to the County, this directive accorded with a longstanding practice of tying leave time to the minimum staffing level per shift. According to the FOP, this directive departed

from a 14 year-old practice of allowing two officers per shift to take leave at the same time.

On February 2, 2004, Officer Brian Cranmer requested eight hours of vacation leave for February 22. Because one officer was already scheduled off for that date, the request was denied.

On February 7, 2004, the FOP filed a grievance asserting that the unilateral directive and denial of the time off violated Article XIII and the parties' past practice. The FOP asked that the new directive be rescinded and the previous practice be restored.

The County denied the grievance so the FOP requested a hearing. In response, the County filed this petition. The County was advised that the scope of negotiations petition would not be processed absent a demand to arbitrate the grievance. The petition was held in abeyance. On September 15, 2004, the FOP demanded arbitration. On September 27, the County asked that processing of the scope petition be resumed.

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 County may have.

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 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). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

We have decided many cases involving the interplay between employees seeking to take negotiated leave time and employers seeking to staff shifts. Our cases establish the following principles relevant to analyzing this negotiability dispute.

A public employer has a non-negotiable right to determine the minimum staffing for each shift. South Brunswick Tp., P.E.R.C. No. 94-100, 20 NJPER 199 (¶25094 1994); Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989). But the scheduling of vacation days and other time off is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements. See, e.g., Long Hill Tp., P.E.R.C. No. 2000-40, 26 NJPER 19 (¶31005 1999); Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996), recon. den., P.E.R.C. No. 97-95, 23 NJPER 163 (¶28080 1997); Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989); Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). An employer may legally agree to allow an employee to take a vacation day even though doing so will, for

example, require it to pay overtime compensation to a replacement employee or temporarily reassign another employee to maintain its staffing levels. See, e.g., New Jersey Highway Auth., P.E.R.C. No. 2001-77, 27 NJPER 292 (¶32106 2001); Town of Secaucus, P.E.R.C. No. 2000-73, 26 NJPER 174 (¶31070 2000); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987). The additional cost of overtime payments does not make a vacation scheduling dispute non-negotiable. See, e.g., Hillsborough Tp., P.E.R.C. No. 2001-53, 27 NJPER 180 (¶32058 2001); South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); Borough of Garwood, P.E.R.C. No., 90-50, 16 NJPER 11 (¶21006 1989); Livingston. Nevertheless, an employer has a reserved right to deny a leave if granting a request would prevent it from deploying the minimum number of officers required for a shift. A contract cannot be construed to provide an automatic right to take leave under such circumstances. Livingston.

We now apply these precedents to the facts of this case to determine whether the grievance, if sustained, would substantially limit the County's governmental policymaking powers. We agree with the County that it has a managerial prerogative to set a minimum staffing level of four officers per shift and we further agree that the parties' contract cannot be legally construed to entitle two officers per shift to take a leave regardless of the employer's ability to ensure that it will

have four officers on a shift. The County must retain a reserved right to deny a requested leave if a shift cannot otherwise be adequately staffed. Consistent with South Brunswick and Livingston, we will restrain arbitration to the extent the grievance, if sustained, would create such an automatic entitlement or prevent the employer from exercising its reserved right.

However, we will not restrain arbitration entirely. Under our case law, the parties may empower an arbitrator to determine whether a request for leave was unreasonably denied given the employer's staffing needs so we have declined to restrain arbitration of such disputes. Livingston. It would not substantially limit any governmental policymaking powers if the parties agreed that the County would not deny a requested leave until it had tried to meet its staffing needs through other methods such as offering overtime compensation to a replacement employee. South Orange Village Tp.; Garwood.



ORDER

The request of the County of Camden for a restraint of binding arbitration is granted to the extent the grievance, if sustained, would automatically entitle two officers per shift to take leaves regardless of the County's ability to meet its minimum staffing level for a shift. The request for a restraint of arbitration is otherwise 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, Fuller, Katz and Watkins voted in favor of this decision. Commissioner Mastriani was not present. None opposed.

DATED: November 23, 2004  
Trenton, New Jersey  
ISSUED: November 24, 2004