

P.E.R.C. NO. 2007-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF UNION,

Petitioner,

-and-

Docket No. SN-2007-031

SUPERIOR OFFICERS ASSOCIATION
OF P.B.A. LOCAL 69,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Union for a restraint of binding arbitration of a grievance filed by P.B.A. Local 69. The grievance contests an order that supervisors attend COMPSTAT meetings on their scheduled days off. The Commission holds that the Township has a non-negotiable managerial prerogative to implement the COMPSTAT system and to require that superior officers from all its divisions, including the four patrol platoons, be represented at weekly COMPSTAT meetings. The Township does not seek a restraint of arbitration over the SOA's overtime compensation claim.

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, Perrotta, Fraser & Forrester,
attorneys (Donald B. Fraser, Jr. on the brief)

For the Respondent, Apruzzese, McDermott, Mastro &
Murphy, attorneys (Arthur R. Thibault, Jr., on the
brief)

DECISION

On December 11, 2006, the Township of Union petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a portion of a grievance filed by the Superior Officers Association of P.B.A. Local 69 ("SOA"). The grievance contests an order that supervisors attend COMPSTAT meetings on their scheduled days off. We restrain arbitration over that claim.

The parties have filed briefs and exhibits. The Township has submitted the certification of its business administrator. These facts appear.

The SOA represents sergeants, lieutenants and captains. The parties' collective negotiations agreement is effective from January 1, 2000 through December 31, 2003. The contract's grievance procedure ends in binding arbitration. The parties are in interest arbitration proceedings for a successor agreement.

Article V is entitled Work Day & Work Week. It provides, in part:

1. 5/2 Work Schedule. The workday for a 5/2-work schedule shall consist of eight (8) consecutive hours on duty. The workweek shall consist of five (5) consecutive days on duty followed by two (2) consecutive days off.
2. 4/4 Work Schedule. This is the work schedule for Basic Patrol Supervisors. The workday for a 4/4-work schedule shall consist of eleven and one-half (11-1/2) consecutive hours on duty. The workweek shall consist of four (4) consecutive days on duty followed by four (4) consecutive days off.

Article V, Section D is entitled Overtime. Section 2 provides, in part:

- c. If an officer is called into duty on his/her regularly scheduled day off, he/she shall be compensated at the rate of time and one-half for eight (8) hours or for all hours worked, whichever is greater.
- d. Whenever an officer is required in connection with the performance of duty to appear in criminal matters or before administrative hearings, or where his/her appearance is

required by the township in any matter not aforementioned, he/she shall be compensated at the rate of time and one-half for two (2) hours or for all hours worked, whichever is greater. All "ON-CALL" time in connection with municipal court appearance shall be compensated in compensatory time at the rate of one (1) hour for each two-(2) hours of "ON CALL" time.

The patrol division is divided into four Platoons: Squads 1A, 1B, 2A and 2B. With the 4/4 schedule, when Squads 1A and 2A work, Squads 1B and 2B are off. A platoon consists of one lieutenant, three sergeants, and 18 patrol officers.

One sergeant and nine patrol officers work from 6:00 a.m. until 5:30 p.m. Two sergeants and nine patrol officers work from 7:00 a.m. until 6:30 p.m. One lieutenant, one sergeant and nine patrol officers work from 5:30 p.m. until 5:00 a.m., and two sergeants and nine patrol officers work from 5:30 p.m. until 6:00 a.m. Shift selection is by seniority.

The business administrator states that from January through May 31, 2006, crime in the Township increased 17% over 2005 levels. In response, the Township implemented COMPSTAT (computerized statistic). The New York City Police Department developed COMPSTAT in 1994 as a model of policing that seeks to increase command staff accountability for responding to crime during their tours of duty. The administrator states that for COMPSTAT to work, superior officers must meet once a week for two

hours. The Township requires that the chief, deputy chief, two captains (patrol and administration), the detective bureau supervisors (one lieutenant and two sergeants), the street crimes supervisors (two sergeants), and the Officer in Charge ("OIC") (the lieutenant or sergeant) of each platoon attend the weekly meetings. If the OIC from any of the four patrol platoons is unavailable, his or her designee can attend. The administrator and deputy administrator also attend the meetings. Strategies and tactics to deter and detect crimes are developed on seven-day and 28-day maps and discussed at these meetings.

Because of the 4/4 schedule for supervisors, the weekly meetings occur when two platoon OIC's are off duty. The administrator states that in order to ensure continuity of supervision, all patrol divisions, departments, and bureaus must be represented, including these officers.

Prior to implementation of COMPSTAT, the administrator met with the SOA President and Vice-President. Originally the COMPSTAT meetings were to be held at 10:00 a.m. every Wednesday, but the start time was changed to 3:00 p.m. at the request of the President and Vice-President to accommodate the schedule of the superior officers reporting to work at 5:30 p.m.

On September 27, 2006, the SOA filed a grievance alleging that the order to attend COMPSTAT meetings on scheduled days off conflicts with the contract. The remedy seeks elimination of the

mandatory attendance by supervisors who are on their scheduled days off.

The Administrator denied the grievance. He stated that the requirement to attend meetings has not changed any supervisor's schedule and under Article V.D.2.d, the Township retains the right to require employees to appear for a meeting for which the officer will be compensated a minimum of two hours at time and one-half.

On October 16, 2006, 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, 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 cannot consider the merits of this 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. Paterson, 87 N.J. 78 (1981). 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 (¶1111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged to have been violated is preempted or would substantially limit government's policymaking powers. No preemption issue has been raised, so we are limited to determining whether restricting the Township's ability to require superior officers to attend COMPSTAT meetings would substantially limit government's policymaking powers.

The SOA accepts the Township's managerial prerogative to implement COMPSTAT, but challenges the order requiring officers to attend weekly meetings on their regularly scheduled days off. The SOA questions the need for the presence of every superior officer from every platoon as vital to disseminating information. It maintains that a captain on the 5/2 schedule who attends COMPSTAT meetings can pass on any necessary information to the superior officers on their first day back. The SOA also maintains that the Township has failed to pay the supervisors in accordance with the contract for the extra days they are required to work. It argues that under Article V.D.2.c, officers called into duty on their regular days off shall be compensated at a rate of time and one-half for 8 hours or for all hours worked, whichever is greater.

The Township disputes the SOA's assertions that captains can disseminate information from COMPSTAT meetings to off-duty supervisors. It wants all platoon commanders to share information with each other.

We hold that the Township had a non-negotiable managerial prerogative to implement the COMPSTAT system and to require that superior officers from all its divisions, including the four patrol platoons, be represented at weekly COMPSTAT meetings. The contractual restriction asserted by the SOA would substantially limit the Township's ability to implement COMPSTAT in the manner it deems most effective by having officers share information and develop strategies and tactics together. Our holding is consistent with other cases finding that police officers can be required to perform services during their off-duty hours in a variety of contexts pertaining to governmental policymaking. See Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208 (1979) (stand-by service during civilian employee job action); Hudson Cty., P.E.R.C. No. 94-87, 20 NJPER 88 (¶25041 1994), recon. den. P.E.R.C. No. 94-112, 20 NJPER 256 (¶25126 1994) (appearing in court and working other overtime assignments on off-duty day); Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984) (off-duty court appearances and stand-by assignments); City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994) (reassigning officers from normal shifts to receive formal training). We note that the Township does not seek to restrain arbitration over the SOA's overtime compensation claim.

ORDER

The request of the Township of Union for a restraint of binding arbitration is granted over the claim that supervisors cannot be required to attend weekly COMPSTAT meetings on their scheduled days off.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo and Fuller voted in favor of this decision. None opposed. Commissioner Watkins recused himself.

ISSUED: May 31, 2007

Trenton, New Jersey