

P.E.R.C. NO. 2008-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SOUTH RIVER,

Petitioner,

-and-

Docket No. SN-2008-023

SOUTH RIVER P.B.A. LOCAL 62,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part the request of the Borough of South River for a restraint of binding arbitration of a grievance filed by South River P.B.A. Local 62. The grievance asserts that compensatory days (XTO) can no longer be included with a vacation block or workweek. The Borough asserts that the dispute involves its directive that employees use separate forms for requesting vacation leaves and compensatory time off. The employer has not asked for a restraint on the assertion that it has altered the practice of allowing employees to use XTO days and vacation days together. The Commission restrains arbitration to the extent the grievance challenges the obligation to fill out separate forms for requesting the use of compensatory and vacation leave allowances.

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

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Charles E. Schlager, Jr., on the brief)

DECISION

On October 9, 2007, the Borough of South River petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by South River P.B.A. Local 62. The employer asserts that the dispute involves its directive that employees use separate forms for requesting vacation leaves and compensatory time off ("XTO"). We restrain arbitration over that narrow issue.

The parties have filed briefs and exhibits. The Borough has submitted the certification of John Bouthilette, the deputy police chief.

The PBA represents all police officers, excluding the chief and deputy chief. The parties' collective negotiations agreement is effective from January 1, 2006 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article XIII of the agreement provides, in part, that employees shall not be permitted to use or accumulate more than 80 hours of XTO time in any calendar year and that the Borough, in consultation with the PBA, will develop a quarterly schedule to keep the number of hours of XTO to 80. Employees must usually provide at least two days' notice for requests to use XTO leave.

General Order #2002-1, effective January 7, 2002, provides, in part:

Policy

It shall and will be the policy that the use of Compensatory Time Off/XTO will be done only with the approval of the Shift Commander, a written notice of minimum of five (5) days shall be provided and that minimum personnel requirements are being met.

At no time will compensatory time off/XTO be permitted in an instance where overtime will be incurred.

This General Order shall apply to all Police Department personnel.

Action

Compensatory Time Off/XTO may be utilized provided that a written notice has been provided five (5) days prior to the requested date for use and approved by the Shift Commander.

Minimum personnel requirements must be met.

Compensatory Time Off/XTO can be utilized in 8 hour blocks or less per day providing the above standards have been met.

The 5 day notice provision will be waived in cases of emergency with the approval of the Chief of Police, if available, Administrative/Detective/Patrol Lieutenants, if available, or the shift commander.

The approval of use of Compensatory Time Off/XTO will not be arbitrarily or capriciously withheld.

Vacation selection schedules are released in November for the upcoming year. Before 2007, officers could use a single form to request both XTO and vacation days.

The deputy chief states that using only one form made it difficult to manage XTO, particularly where XTO was based on seniority. For the 2007 vacation selection, officers were given a memorandum stating that:

All requests for XTO must be completed on the South River Police Department Time Off Requests form, and shall be submitted separately from the enclosed vacation request forms. No XTO will be accepted as part of your vacation schedule requests, due to the fact that XTO shall only be granted on the basis of manpower availability.

On January 8, 2007, the PBA filed a grievance asserting that XTO days can no longer be included with a "vacation block or workweek."

On January 30, 2007, the chief responded that XTO requests were separated from vacation requests for these reasons:

1. To maintain consistency with South River Police Department General Order 2002-1 (copy is attached) that specifically

indicates that "At no time will compensatory time off/XTO be permitted in an instance where overtime will be incurred."

2. To assist with the tracking of XTO time, which is tracked separately from other benefit days, and requires the monthly posting of XTO balances by administration.

3. To prevent officers from scheduling XTO time off months in advance, anticipating that they will have acquired the necessary XTO time by the date of the XTO request.

At no time does the wording change deny any officer the ability to utilize XTO at any time during the year, as long as the necessary manpower is available. The only actual change requires each officer to submit their XTO requests on "South River Police Department Time off Requests form" separate from the Vacation Master Schedule, and reminding them that XTO shall only be granted on the basis of manpower availability.

The grievance was denied at all levels. On April 24, 2007, the PBA demanded arbitration. The demand states:

The PBA, on behalf of its members, assert that the Employer violated the Collective Bargaining Agreement and the past practice of the parties by revising department policy without negotiation to eliminate an officer's ability to take "extra time off" in combination with other leave time.

The employer then filed this petition, describing the dispute as:

Whether the employer's decision to require that requests to use Compensatory Time Off (XTO) be submitted on South River Police Department Time Off Request Forms is negotiable.

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 cannot consider the merits of the grievance or any contractual defenses the employer may have.

As this dispute arises in the context of a grievance involving police officers or firefighters, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. A subject is mandatorily negotiable if it is not preempted by statute or regulation and it intimately and directly affects employee work and welfare without significantly interfering with the exercise of a management prerogative. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). A subject involving a management prerogative can still be permissively negotiable if agreement would not place substantial limitations on government's policymaking powers.

The only issue identified in the scope of negotiations petition is the requirement that officers complete a separate form for XTO requests. This is a matter that does not intimately

and directly affect the work and welfare of these police officers, but is instead wholly within the managerial realm; it is pertinent to management's need to keep track of employee work hours and time off.^{1/}

A public employer normally has a managerial right to establish procedures to keep track of employee work hours and time off. See Galloway Tp. Bd. Ed. v. Galloway Tp. Ed. Ass'n, 135 N.J. Super. 269 (Ch. Div. 1975), aff'd 142 N.J. Super. 44 (App. Div. 1976); Plainfield Bd. of Ed., NJPER Supp.2d 29 (¶19 App. Div. 1974), certif. den. 66 N.J. 327 (1974); Paterson State Operated School Dist., P.E.R.C. No. 97-107, 23 NJPER 202 (¶28097 1977) (sign in -- sign out procedures). In Plainfield Bd. of Ed., the Court observed:

The matters of where teachers shall be required to sign in and sign out and whether they shall be required to write their full names or initials can hardly be characterized as matters of major educational policy. We do believe, however, that they fall into the category of managerial prerogatives. . . . Such requirements have at most a minimal effect upon the terms and conditions of employment. [NJPER Supp.2d at 30]

^{1/} Although the grievance asserts that the employer will no longer allow XTO days to be included with a "vacation block or workweek," the employer has not asked for a restraint of arbitration on that issue and instead asserts that it has not altered the practice of allowing employees to use XTO and vacation days together (Reply brief at 2). That issue may thus be arbitrated.

Because the requirement to fill out separate forms for vacation and XTO permits the employer to manage XTO time without affecting employee work and welfare, the challenge to the requirement does not meet the Paterson standards.

ORDER

The request of the Borough of South River for a restraint of binding arbitration is granted to the extent the grievance challenges the obligation to fill out separate forms for requesting the use of XTO and vacation leave allowances.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: December 20, 2007

Trenton, New Jersey