

P.E.R.C. NO. 2008-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY PROSECUTOR'S OFFICE,

Petitioner,

-and-

Docket No. SN-2008-062

ATLANTIC COUNTY PROSECUTOR'S SUPERIOR
OFFICERS, P.B.A. LOCAL #77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Atlantic County Prosecutor's Office for a restraint of binding arbitration of a grievance filed by the Atlantic County Prosecutor's Superior Officers, P.B.A. Local #77. The grievance alleges that the Prosecutor's Office violated the parties' collective negotiations agreement by failing to pay overtime to a captain and three lieutenants when they worked beyond their normal 40-hour work week. The Commission denies the request for a restraint because overtime is a legally arbitrable subject.

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, Eric M. Bernstein & Associates,
LLC, attorneys (Deborah J. Bracaglia, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky &
Bukosky, attorneys (Gregory G. Watts, on the brief)

DECISION

On March 13, 2008, the Atlantic County Prosecutor's Office petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Atlantic County Prosecutor's Superior Officers, P.B.A. Local #77. The grievance alleges that the Prosecutor's Office violated the parties' collective negotiations agreement by failing to pay overtime to a captain and three lieutenants when they worked beyond their normal 40-hour work week. We deny the request for a restraint because overtime is a legally arbitrable subject.

The parties have filed briefs and exhibits.^{1/} These facts appear.

The PBA represents all captains and lieutenants. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2006. The grievance procedure ends in binding arbitration.

Article 4 is entitled Work Schedule. It provides in pertinent part:

- 4.1 The normal work week shall consist of forty (40) hours, Monday through Friday. The normal shift shall consist of eight (8) hours work between 8:00 AM and 5:30 p.m., with an unpaid half hour (1/2) or hour for lunch, which will be at the discretion of the Prosecutor to assign.
- 4.2 A regular work schedule shall be defined as a period of five consecutive days of work and two consecutive days off.

Article 5 is entitled Holidays and provides that employees who work on holidays are paid as per past practice.

Article 6 is entitled Personal Time/Compensatory Time. It provides that all officers are entitled to three administrative leave days annually; administrative/compensatory time may be used in hourly increments and should be scheduled in advance;

^{1/} We deny the PBA's motion to file a sur-reply to the employer's reply brief.

administrative time must be used in the year it is accrued; compensatory time may be carried from year to year; and employees who are requested or ordered to carry a pager receive eight days of compensatory time.

On July 27, 2007, the PBA filed a Step 3 grievance that alleges that officers were denied overtime pay for work beyond a 40-hour week during the week of July 8; none of the officers were notified that their overtime had been denied prior to receiving their paychecks; and the denial of overtime violates the past practice of paying overtime compensation for work in excess of 40 hours, specifically when those hours fall on a holiday. The grievance further states that with the exception of one officer, all members were granted prior approval to work for overtime compensation, consistent with the overtime policy.

On August 1, 2007, the employer denied the grievance. On January 22, 2008, the PBA demanded arbitration alleging violations of Articles 4 and 6 and prior practice by failing to pay overtime for hours in excess of those established by the agreement.^{2/} This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

^{2/} The grievance alleges violations of Articles 4 and 5; the demand for arbitration alleges violations of Articles 4 and 6.

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 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, 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 employer argues that the grievance is preempted because captains and lieutenants are administrative/executive employees exempt from the overtime requirements of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 213(a)(1); the request for arbitration is out of time under Step 4 of the grievance procedure; and the parties' agreement does not contain any language regarding overtime compensation.

The PBA argues that the grievance raises contract interpretation issues appropriate for arbitration and that timeliness is not an issue to be resolved in a scope of negotiations proceeding.

The FLSA guarantees employees certain minimum rights to overtime compensation. An employer may agree to overtime compensation payments above those required by the FLSA. State of New Jersey, P.E.R.C. No. 86-139, 12 NJPER 484 (¶17185 1986). Therefore, the FLSA does not preempt the negotiation of overtime compensation for these employees. We express no opinion on whether these employees have a right to overtime compensation under the FLSA.

The timeliness of the request for arbitration as well as the merits of the grievance are questions outside our narrow scope of negotiations jurisdiction and appropriate for the arbitrator. Ridgefield Park.

ORDER

The request of the Atlantic County Prosecutor's Office for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: May 29, 2008

Trenton, New Jersey