

P.E.R.C. NO. 2010-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-2010-026

HUDSON COUNTY SHERIFF'S OFFICERS,
P.B.A. LOCAL 334,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the County of Hudson's request for a restraint of binding arbitration of a grievance filed by Hudson County Sheriff's Officers, PBA Local 334. The grievance asserts that the County violated the parties' collective negotiations agreement and/or past practice when it ordered off-duty officers to appear at headquarters prior to and after court appearances. The Commission restrains arbitration of the portion of the grievance contesting the reporting requirement prior to court appearances, and permits the portion of the grievance contesting the requirement to report to headquarters after court proceedings to proceed to arbitration.

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, Scarinci Hollenbeck, attorneys
(Christina M. Michelson, of counsel)

For the Respondent, Lindabury McCormick Estabrook &
Cooper, attorneys (Eric B. Levine, of counsel; Blake C.
Width, on the brief)

DECISION

On October 13, 2009, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Hudson County Sheriff's Officers, P.B.A. Local 334. The grievance asserts that the County violated the parties' collective negotiations agreement and/or past practice when it ordered officers to appear at headquarters prior to and after court appearances. We restrain arbitration of the portion of the grievance contesting the reporting requirement prior to court appearances, and decline to restrain arbitration of the portion

of the grievance contesting the requirement to report to headquarters after court proceedings.

The parties have filed briefs. The County has also filed exhibits and the certification of the Chief of Operations of the Sheriff's Office. The PBA has also filed a certification of its Patrol Division Liaison. These facts appear.

The PBA represents all sheriffs officers below the rank of sergeant. The parties' collective negotiations agreement is effective from January 1, 2008 through December 31, 2012. The grievance procedure ends in binding arbitration.

Article VIII of the parties' agreement is entitled "Overtime." It provides, in pertinent part, that "[t]he County shall pay all employees for appearance in Municipal Court, Superior Court, Juvenile Court, Grand Jury and ABC Proceedings while off duty time and one half (1 1/2) with a four (4) hour minimum."

The parties' agreement also contains a Management Rights clause. This clause provides the County and Sheriff with the right to determine the work activities and work schedules of employees, control the quality of services, and implement reasonable work rules.

Officers may be required to attend court or hearing proceedings throughout Hudson County. Officers most frequently attend municipal courts in Jersey City and North Bergen, but are

also commonly called to municipal court in Bayonne and Secaucus. The officers' headquarters is located at 257 Cornelius Avenue in Jersey City.

On-duty officers are required to submit to a roll call at the beginning of each shift to monitor dress and account for their attendance. On-duty officers are also required to be appropriately dressed when attending court or hearing proceedings.

On August 31, 2009, the Sheriff issued General Order 07-09. The Order provides guidelines to "insure uniformity and professionalism when [officers attend] Court and Hearings." The Order provides, in pertinent part:

1. When members of the Department are required to appear on any official matter in any Court or Hearing they will be neatly attired in the Uniform of the Day. . .
2. All members will report to headquarters for inspection before responding to the appropriate court or hearing venue. . .
8. Upon completion of the scheduled court or hearing, members will report off duty at [headquarters]. The submission of court or hearing overtime will be handled by the personnel at [headquarters]. The Commander at [headquarters] will be responsible for the proper submission of all court/hearing related overtime hours to their respective commands.

The Chief of Operations certifies that the Sheriff issued the Order because off-duty officers had reported to court "unkempt, dressed out of uniform and unshaven." The PBA

challenges the County's assertion that officers have reported to court "unkempt." The PBA Patrol Division Liaison certifies that no officer has been disciplined for violating the dress code and that three or four years ago officers were allowed to wear street clothes while appearing in municipal court.

Following the issuance of the Order, the PBA filed a grievance challenging the requirement to report to headquarters before and after court or hearing appearances. The grievance alleges that the Order violates the parties' negotiated agreement and past practice. The Patrol Division Liaison certifies that the Order burdens officers with excessive travel time because of traffic and requires officers to incur mileage costs and wear and tear on their personal vehicles.

The County offered to provide County vehicles to officers for their commute from headquarters to court and back. According to the County, the PBA rejected the offer, fearing that officers would be "waved down" by a civilian in need delaying their court appearance and that it might create confusion as to when an officer is on-duty versus off-duty. According to the PBA, the County withdrew the option.

The grievance was not resolved. On or about February 25, 2009, 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 cannot consider the merits of the grievance or any contractual defenses the employer 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 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 agreement alleged is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

The County asserts that it has a managerial prerogative to require officers to appear at headquarters for a visual inspection prior to a court appearance. It further asserts that it has a managerial prerogative to require officers to report to headquarters after a court appearance to ensure that employees accurately account for their overtime. The County asserts that the reporting requirements serve the governmental policy purpose of providing the public the best service at required court appearances by ensuring that officers are complying with the required uniform and attending required court appearances. The County also asserts that the PBA's grievance was not filed appropriately.

The PBA contends that the reporting requirement is a negotiable and arbitrable increase in the workday.

The County replies that this is not an extension of the workday because this change affects off-duty officers only. It further replies that travel time to and from court is accounted for in the four-hour contractual overtime minimum.

We begin with the argument that the grievance was not filed in accordance with the parties' negotiated grievance procedure. Whether the grievance was properly filed is an issue of procedural arbitrability that must be considered by the arbitrator. Ridgefield Park; Borough of Middlesex, P.E.R.C. No. 2006-93, 32 NJPER 225 (¶93 2006); Milltown Bd. of Ed., P.E.R.C. No. 99-95, 25 NJPER 240 (¶30101 1999). In addition, the question of whether the contract permits the County to assign additional duties during the four-hour contractual overtime minimum goes to the merits of the grievance and is an issue that also must be considered by the arbitrator.

We next consider whether the County can require officers to report to headquarters before court appearances to ensure they are properly attired.

A police officer's uniform relates to the manner and means of delivering police services and as such is not mandatorily negotiable. City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), recon. den. P.E.R.C. No. 79-95, 5 NJPER 234

(¶10131 1979), aff'd in part, rev'd in part NJPER Supp.2d 84 (¶65 App. Div. 1980). The uniform's aura of authority applies to an officer called to court proceedings on behalf of the County. Compare City of Hackensack, P.E.R.C. No. 88-127, 14 NJPER 409 (¶19163 1988) (restraining arbitration over directive requiring firefighters to keep dress uniforms at fire headquarters to ensure firefighters wore uniform during desk assignments).

In City of Camden, P.E.R.C. No. 91-45, 16 NJPER 596 (¶21262 1990), we restrained arbitration of a grievance contesting an order requiring police officers to report for bi-annual uniform inspections. The purpose of the inspection was to ensure that officers had complete and well-maintained uniforms for the winter and summer. We stated, "The City has a right to examine the appearance of its police in uniform." Id. at 597.

Here, the County wishes to inspect officers' appearance and uniforms prior to court appearances at which they will be representing the County. The PBA asserts that the reporting requirement is an increase in the workday. We recognize that the reporting requirement may increase the time required to fulfill court or hearing appearance duties, but - on balance - the employer's interest in ensuring officers are appropriately dressed outweighs the employees' interest in minimizing the off-duty time required to complete a court appearance.

Under Paterson, however, we must make one last determination: even though the issue is not mandatorily negotiable, would enforcement of the PBA's challenge to the reporting requirement before court appearances place substantial limitations on government's policymaking powers? The answer is yes in this case and so arbitration must be restrained. The County has a governmental policymaking reason for ensuring that officers are complying with uniform requirements when they are representing the County in court proceedings. Arbitration over the requirement to appear at headquarters prior to court appearances would substantially limit that governmental policymaking power. We will therefore restrain binding arbitration of this portion of the grievance.

We next consider whether the County can also require officers to report to headquarters after court appearances to account for their attendance. The PBA argues that this is also an increase in the workday.

Management has a prerogative to establish timekeeping procedures to verify that employees are at work when they are required to be. See *Galloway Tp. Bd. of 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); *South Hackensack Bd. of Ed.*, P.E.R.C. No. 98-70, 24 NJPER 14 (¶29009 1997); *State-Operated School Dist. of City of Paterson*, P.E.R.C. No. 97-107, 23 NJPER 202 (¶28097 1997);

North Bergen Bd. of Ed., P.E.R.C No. 92-5, 17 NJPER 378 (¶22177 1991). We need not reach the question of whether that prerogative extends to requiring an officer to return to headquarters after a court appearance on his or her day off because we find that the grievance is at least permissively negotiable, as it would not substantially limit the County's governmental policymaking powers. The County set forth one reason to substantiate the reporting requirement after a court appearance - to verify employee's overtime hours. But no facts have been presented to show an issue with employees abusing time. Moreover, no facts have been presented to explain why the County would be unable to verify employees' time through alternate means that may have less of an impact on employees' free time on their day off. Therefore, the portion of the grievance contesting the reporting requirement after court appearances is legally arbitrable.

ORDER

The request of the County of Hudson for a restraint of binding arbitration over the requirement that officers report to headquarters before court or hearing appearances is granted. The request of the County of Hudson for a restraint of binding

arbitration over the requirement that officers report to headquarters after court or hearing appearances is denied.

BY ORDER OF THE COMMISSION

Commissioners Fuller, Krengel and Watkins voted in favor of this decision. Commissioner Eaton voted against this decision. Commissioners Colligan and Fuller recused themselves.

ISSUED: April 29, 2010

Trenton, New Jersey