

P.E.R.C. NO. 2010-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Petitioner,

-and-

Docket No. SN-2009-057

FRATERNAL ORDER OF POLICE
SHERIFF'S SUPERIOR OFFICERS
OF UNION COUNTY LODGE NO. 103,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the County of Union's request for a restraint of binding arbitration of a grievance filed by Fraternal Order of Police Sheriff's Superior Officers of Union County Lodge No. 103. The grievance contests the County's refusal to negotiate the impact of its decision to enter into a contract with Essex County for inmate transport to and security at East Orange General Hospital. The Commission holds that arbitration is restrained to the extent the grievance challenges Union County's decision to enter into the agreement with Essex County. The Commission declines to restrain arbitration regarding the County's alleged refusal to negotiate the impact of the agreement.

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, Bauch Zucker Hatfield LLC,
attorneys (Richard H. Bauch, of counsel)

For the Respondent, Abramson & Liebeskind Associates
(Marc Abramson, on the brief)

DECISION

On March 3, 2009, the County of Union petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Fraternal Order of Police Sheriff's Superior Officers of Union County Lodge No. 103 (FOP). The grievance contests the County's refusal to negotiate the impact of its decision to enter into a contract with Essex County by which Essex County would provide officer coverage to transport and secure Union County inmates that receive care at East Orange General Hospital (EOGH). We restrain arbitration of the grievance to the extent it challenges Union County's decision to enter into the agreement with Essex County. We decline to

restrain arbitration regarding the County's alleged refusal to negotiate the impact of the agreement.

The parties have filed exhibits and briefs. The County filed a certification from its attorney. These facts appear.

The FOP represents the Sheriff's superior officers, through and including the rank of captain. The County and Union County Sheriff and FOP entered into a collective negotiations agreement effective from January 1, 2005 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article II is entitled "Management Rights." It provides, in pertinent part:

The Sheriff shall have the right to determine schedules of work and the duties, responsibility and assignments of all employees with respect thereto except as modified by this agreement.

Article XI is entitled "Overtime." It provides the rate of pay for overtime assignments and states:

Hospital Prisoner Security Assignments for Superior Officers shall be equally distributed from a rotating list of officers who have the ability to perform the required task.

Article VII is entitled "Retention of Existing Benefits." It provides:

Except as otherwise specifically provided to the contrary in this Agreement, all rights, privilege and benefits which employees of the Employer have heretofore enjoyed and are presently enjoying, shall be maintained and

continued by the Employer during the term of this Agreement. . . .

Article XXI is entitled "Savings Clause." It provides:

In the event that any federal or state legislation, governmental regulation or court decision shall cause invalidation of any Article or Section of this Agreement, all other Articles and Sections not so invalidated shall remain in full force and effect. The parties shall immediately meet to negotiate concerning the Article or Section declared invalid.

The Interlocal Services Act, N.J.S.A. 40:8A-1 et seq., authorizes local governing units to enter into contracts with any other local governing unit "for the joint provision within their several jurisdictions of any services which any party to the agreement is empowered to render within its own jurisdiction." N.J.S.A. 40:8A-3. Police protection is one such service. N.J.S.A. 40:8A-5.^{1/}

On January 24, 2008, the County adopted a resolution authorizing the county manager to enter into a contract with EOGH. The County determined that it was in its "best interest"

^{1/} The parties cite the Interlocal Services Act. However, the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et seq., repealed and replaced the Interlocal Services Act. The Uniform Shared Services and Consolidation Act provides public employers the same ability to contract with other public employers "to provide or receive any service that each local unit participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purposes of any of the participating local units." N.J.S.A. 40A:65-4. Police protection is one of those services. N.J.S.A. 40A:65-8.

for EOGH to provide "inpatient and outpatient services, emergency room care, and physical examinations to Union County Jail inmates in need of medical/psychiatric treatment."

On February 27, 2008, the County adopted a resolution authorizing the county manager to enter into an interlocal services agreement with Essex County so that Essex County officers would provide the supervision and security for Union County inmates at EOGH. Subsequently, Essex and Union Counties executed an interlocal services agreement to that effect.

On March 4, 2008, Union County issued procedures for inmate transport to and from EOGH, minimizing the obligation of its sheriff's officers and delegating security duties to Essex County officers.

The interlocal service agreement has not resulted in the loss of jobs or a reduction in hours of work for Union County sheriff's officers.

In late March 2008, the FOP orally presented a grievance to the County contesting the use of Essex County officers for Union County inmates receiving care at EOGH. On March 28, 2008, the grievance was denied.

At Step 2 of the grievance procedure, Policemen's Benevolent Association Local 108, which represents the County's non-supervisory sheriff's officers, joined the FOP's grievance. The grievance asserts that Union County officers have been assigned

inmate security duties at various hospitals for 21 years, requests the County cease using Essex officers to fill that post, and demands negotiations. The grievance also asserts that, in the last round of negotiations, the FOP agreed to reduce the overtime rate to preserve this detail. The FOP's grievance also raises concerns about the County's exposure to liability in having officers from outside the County guard County inmates.

On June 9, 2008, the County denied the Step 2 grievance. The PBA elected not to process its grievance further; the FOP demanded binding 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. [Id. at 154]

We thus cannot consider the merits of the grievance or the wisdom of the County's shared services agreement. We also do not consider the validity of that agreement under the Uniform Shared Services and Consolidation Act.

Arbitration in this case cannot be restrained unless an alleged agreement prohibiting the agreement with Essex County would place substantial limitations on Union County's governmental policymaking powers. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). Applying that standard, we conclude that arbitration must be restrained to the extent the grievance challenges the interlocal services agreement. However, we decline to restrain arbitration of the FOP's demand for negotiations.

The County asserts that it has a managerial prerogative under Local 195, IFPTE v. State, 88 N.J. 393 (1982), to subcontract to Essex County its inmate security detail at EOGH. The County further asserts that it has "legislatively-delegated authority" to transfer inmate responsibilities to Essex County and that it entered into the interlocal services agreement because of "scarce personnel and resources." The County also asserts that the FOP is seeking to arbitrate guaranteed overtime, to which it is not entitled.

The FOP responds that it recognizes the County's right to enter into an interlocal services agreement with Essex County. The FOP further responds that the agreement does not relieve the County of its duty to negotiate the impact of the elimination of an overtime opportunity, when the FOP specifically agreed to reduce the overtime rate to preserve the detail. The FOP also

asserts that the Commission should treat this agreement like a subcontract of work.

We have distinguished interlocal service agreements from other subcontracting and unit work cases because interlocal service agreements are neither an assignment of work to a private employer nor the assignment of unit work to non-unit employees of the same public employer. Instead, we apply the traditional negotiability balancing test to the circumstances of the case. See Cape May Cty. Bridge Comm'n, P.E.R.C. No. 92-8, 17 NJPER 382 (¶22180 1991); Borough of Teterboro, P.E.R.C. No. 92-108, 18 NJPER 265 (¶23111 1992).

Sheriff's officers have an interest in preserving their unit work and negotiated compensation for overtime. The County has an interest in deciding what services it will provide and determining the best method to provide those services. Here, the County eliminated an overtime opportunity for sheriff's officers when it entered into an interlocal services agreement with Essex County to transport and provide security for Union County inmates at EOGH. This action has not resulted in any layoffs or reduced the work week below that specified in the contract. The sheriff's officers have lost overtime opportunities, but an overtime guarantee cannot be used to require an employer to deliver services when it chooses not to do so. New Jersey Sports & Expo. Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181

1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988); Bound Brook Bd. of Ed.; P.E.R.C. No. 2003-43, 28 NJPER 592 (¶33185 2002); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). The County's interest in determining what services to provide and how they will be provided outweighs the FOP's interest in preserving unit work. A restriction on the County's right to enter into the agreement would substantially limit its governmental policymaking powers.

However, the FOP is not simply seeking the rescission of the interlocal services agreement and return of the overtime opportunity to Union County sheriff's officers. Cf. Cape May Cty. Bridge Comm'n; Teterboro. Rather, the FOP alleges that it agreed to a reduction in the overtime compensation rate to preserve this detail and that by removing the detail the County is obligated to negotiate the impact.

Under these circumstances, in light of the FOP's alleged negotiations concession to reduce mandatorily negotiable overtime compensation and because the FOP is merely seeking an arbitral order to negotiate the impact of the County's agreement, we conclude that arbitration of that portion of the FOP's grievance would not substantially limit the County's decision to contract with Essex County for EOGH inmate security and transportation. Borough of Cliffside Park, P.E.R.C. No. 2010-61, 36 NJPER 48 (¶22

2010) (because aspects of a policy change triggered changes in mandatorily negotiable subjects, the union could arbitrate its claim that the employer was contractually obligated to negotiate).

ORDER

The request of the County of Union for a restraint of binding arbitration is granted to the extent the grievance challenges the decision to enter into an interlocal services agreement. In light of the FOP's alleged negotiations concession to reduce mandatorily negotiable overtime compensation and because the FOP is merely seeking an arbitral order to negotiate the impact of the County's agreement, the request is denied regarding the FOP's demand for negotiations of the impact of the agreement.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioners Colligan and Fuller were not present.

ISSUED: May 27, 2010

Trenton, New Jersey