

P.E.R.C. NO. 2014-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF GLEN RIDGE,

Petitioner,

-and-

Docket No. SN-2013-025

PBA LOCAL 58,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Glen Ridge for a restraint of binding arbitration of a grievance filed by PBA Local 58. The grievance asserts that the County violated a sidebar agreement on minimum staffing and overtime coverage when it ordered a civilian dispatcher to perform desk dispatch duty after a patrol officer called out sick, and did not add another patrol officer to cover the dispatch desk after the assigned dispatcher also called out sick. The Commission holds that changes to police officer staffing levels alleged to violate employer-set minimum staffing levels may not be challenged through binding grievance arbitration. The Commission notes that the PBA's assertion that its grievance also concerns employee safety impacts of the Borough's decision to operate below normal staffing levels was not supported by a certification of specific safety issues. The Commission also finds that this case does not involve allocation of overtime among qualified employees in the same unit because dispatching is the primary duty of the civilian dispatchers who are in a different negotiations unit.

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 (Jonathan F. Cohen, of counsel)

For the Respondent, Loccke, Correia, Limsy & Bukosky, attorneys (Marcia J. Tapia, of counsel)

DECISION

On December 20, 2012, the Borough of Glen Ridge (Borough) petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by PBA Local 58 (PBA). The grievance asserts that the Borough violated a sidebar agreement on minimum staffing and overtime coverage, when:

- It ordered a civilian dispatcher to perform desk dispatch duty after a patrol officer called out sick leaving a shift understaffed and;
- It did not add another patrol officer to cover the desk after the assigned dispatcher also called out sick and did not report.

The Township has filed briefs, exhibits, and the certification of Police Chief Sheila Byron. The PBA has submitted a brief and exhibits.<sup>1/</sup> These facts appear.

The PBA represents all Borough Police Officers, Detectives, and Sergeants.<sup>2/</sup> The PBA and the Borough are parties to a collective negotiations agreement (CNA) effective from January 1, 2010 through December 31, 2012. The PBA and Borough are also parties to a Side-Bar Agreement as modified in November 2011. The grievance procedure ends in binding arbitration.

Article 5. of the Side-Bar Agreement is entitled "Minimum Staffing" and provides:

a. Minimum shift staffing is established by the Chief of Police in accordance with the

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1/ The PBA did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

2/ The recognition clause of the parties' agreement reads:

The Borough hereby recognizes the aforementioned PBA as the exclusive majority representative for all its Police Officers; Detectives; Police Sergeants and Detective Sergeants employed by the Borough but excluding Police Lieutenants and all other Police Superior Officers, managerial executives, confidential employees and all other employees of the Borough.

The parties' filings do not expressly note that dispatchers, titled "Community Service Officers," are members of a separate collective negotiations unit represented by the Communications Workers of America. We take administrative notice that a recent agreement between CWA and the Borough covering the CSOs and other civilian employees is on the Commission's web site.

Table of Organization adopted by the governing body and may be changed at his/her direction either permanently or on a temporary basis. The Chief shall notify the Patrol Commander and/or the Scheduling officer prior to the target date so officers will be informed.

b. Currently: Three (3) officers assigned to patrol, and one (1) desk officer shall be the minimum workforce per tour.

c. One officer per shift will be granted a Vacation/Holiday/Compensation Day/SAT Day at a time.

Article 9. of the Side-Bar Agreement is entitled "Coverage of Overtime and Extended Shifts" and provides:

a. Officers from the Off Platoon working the same shift shall be contacted first (i.e. Day shift for Day shift).

b. If none of those officers are available, the Off Platoon working the opposite shift shall be contacted in seniority order (i.e. Day shift to night shift).

c. If a replacement officer is not available, the Sergeant will offer the overtime by seniority to officers working assignments other than squad assignments (non uniform personnel), and then on duty officers by seniority. If none accept the overtime, the officer with the least seniority will be ordered to work.

d. Officers working the 12 hour tour may be extended five (5) hours to cover overtime, unless they are scheduled off the next day and then they may be extended one (1) additional hour.

e. Officers must have a minimum of Seven (7) hours off before their next shift.

f. EVERY EFFORT is to be made to avoid having an officer extend his/her current shift by grounds of health and safety.

Chief Byron certifies to the following:

- Prior to 2010, the Borough used four police patrol squads, each consisting of a Sergeant, three Patrol Officers, and a civilian Community Service Officer (CSO), commonly called a dispatcher.
- In July 2012, the Borough employed only two trained civilian CSOs.
- Police officers were assigned as dispatchers during two of the four shifts pending the hiring of two more civilian CSOs.

Regarding the events that prompted the grievance the Chief certifies:

- On July 8, 2012, the Department was advised that a sergeant, from a squad that did not have a regular CSO, would be out on sick leave on his July 9-10 tours, thus reducing staffing to three Patrol Officers. Rather than assign a fourth Patrol Officer for dispatching work, one of the CSOs was ordered to work overtime to cover the desk on July 10.
- On July 10, the assigned CSO called out sick;
- The Chief assigned one of the three Patrol Officers scheduled for that shift to staff the dispatch desk, leaving only two Patrol Officers assigned to the road.

In response, the PBA filed a Step 1 grievance and met with the Chief. A July 15, 2012 e-mail from PBA President Nick Salerno to the Chief confirmed the PBA's understanding of that meeting, and stated, in pertinent part:

The PBA contends that you violated the sidebar in the hiring of overtime and lowering the minimum manpower to two on

Tuesday when [a CSO] called in sick after being ordered to work the overtime.

On August 3, 2012, the Chief denied the grievance at Step 2 in writing, stating, in pertinent part:

- On July 9<sup>th</sup> and 10<sup>th</sup> the schedule necessitated a need for a Community Service Officer to meet staffing needs. A Community Service Officer was ordered in at my direction.
- On July 10, 2012 minimum staffing was lowered after the Community Service Officer who had been ordered in called out sick.

When a Community Service Officer is available to work an overtime shift and cover dispatch duties so that officers scheduled can perform road patrol duties, there is no need to utilize Section 9, **Coverage of Overtime and Extended Shifts**, within **the SIDE BAR AGREEMENT Revised for 2011 between the Glen Ridge PBA Local 58 and The Borough of Glen Ridge, New Jersey Modified-Pitman Schedule**.

[emphasis in original]

The grievance was denied at Step 3 by Borough Administrator Michael J. Rohal who wrote a memorandum affirming the Chief's decision. On September 27, 2012, the PBA 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.

Thus, we do not consider the merits of the grievance or any contractual defenses that the Borough 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. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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.

Because this dispute involves a grievance, arbitration is 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). Thus, if we conclude that the PBA's grievance is at least permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The Borough asserts that the PBA's grievance conflicts with its rights to set staffing levels and make assignments by matching the best qualified employees to particular jobs. Citing Jersey City, 154 N.J. 355 (1998), the Borough asserts that a municipality has the managerial prerogative to assign police department duties, such as dispatching, to civilians even though they had been assigned to police officers. The Borough also argues that the Chief's decision to lower the minimum staffing level to two patrol officers on July 10, 2012 was a non-negotiable managerial prerogative and that arbitration of the PBA grievance would interfere with government policy.<sup>3/</sup>

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<sup>3/</sup> The Borough also cites Borough of Bogota, P.E.R.C. No. 99-  
(continued...)

The PBA asserts that, instead of following the side-bar agreement and past practice of first contacting a police officer to fill in as a desk officer, the Chief allocated that overtime opportunity to a civilian dispatcher. It argues that overtime allocation procedures are mandatorily negotiable, and that the Chief's decision to call in a civilian dispatcher on overtime, rather than a patrol officer, is arbitrable.<sup>4/</sup> The PBA also asserts that the Borough's determination to operate below the minimum manpower levels resulted in mandatorily negotiable impacts on officers' health and safety. It argues that the Commission has allowed arbitration over employee safety issues, so long as there is no inappropriate interference with the employer's prerogative to set staffing levels.

The Borough's reply brief asserts that the issue is not about overtime allocation among unit members, but challenges the Chief's choice of which employee (each in a different collective negotiations unit) was most qualified to work the dispatch desk.

We find that all aspects of the PBA's grievance are not arbitrable under the Paterson standard.

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<sup>3/</sup> (...continued)  
77, 25 NJPER 129 (¶30058 1999) and Borough of North Caldwell, P.E.R.C. No. 2010-51, 36 NJPER 10 (¶4 2010).

<sup>4/</sup> The PBA cites Township of Bound Brook, P.E.R.C. No. 88-30, 13 NJPER 760 (¶18287 1987), in which the employer temporarily reassigned a detective to desk officer duty instead of assigning a patrol officer on an overtime basis.

First, we have consistently held that changes to police officer staffing levels, whether permanent or temporary, alleged to violate employer-set minimums, may not be challenged through binding grievance arbitration. See West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101 (¶31041 2000).<sup>5/</sup>

Second, although our cases recognize that below normal staffing levels can impact employee safety, (West Paterson, 26 NJPER at 103), unless identifiable safety issues that are severable from the staffing determination are presented, we will not allow a grievance to be submitted to arbitration where a non-specific claim of unsafe conditions is made. See Hawthorne Borough, P.E.R.C. No. 2011-61, 37 NJPER 54 (¶20 2011) (Granting restraint of arbitration of grievance asserting Borough's failure to replace an officer to meet the five-officer minimum staffing level deprived officer of overtime; no defined safety issues were raised). Compare Lopatcong Tp., P.E.R.C. No. 91-15, 16 NJPER 479 (¶21207 1990), (allowing arbitration of grievance seeking premium pay for police patrolling alone after midnight; employer still had right to assign one or two officers to a patrol car).

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<sup>5/</sup> In that case, the grievances alleged violations of minimum staffing levels when temporary shift vacancies were filled by civilian dispatchers rather than police to avoid overtime payments. We allowed arbitration except to the extent the grievances sought a ruling that the Borough was required to call in and assign a third police officer to patrol duties. Here, because of the assigned CSO's illness, no payments were made to any CSO on that shift and the PBA's demand that a third officer be called in, is analogous to the claim which we barred from arbitration in West Paterson.

Finally, we note that dispatching is the primary duty of the civilian CSOs who are in a different negotiations unit. The PBA cannot claim that dispatching has consistently, primarily and historically been the work of its unit, even though police have been performing those duties because fewer CSOs are now on staff.<sup>6/</sup> See Jersey City, 154 N.J. at 577.<sup>7/</sup> Thus, the PBA cannot arbitrate a claim that their unit members have a preference over CSOs to occupy a vacant dispatching post on a given shift.

ORDER

The request of the Borough of Glen Ridge for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves. Commissioner Voos was not present.

ISSUED: September 26, 2013

Trenton, New Jersey

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<sup>6/</sup> This case does not involve allocation of overtime opportunities among qualified employees in the same negotiating unit. Compare Bound Brook.

<sup>7/</sup> Compare Rutgers, The State University and Local 1761, AFSCME, Coun. No. 52, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980) (allowing arbitration of grievance filed by representative of civilian dispatchers where non-unit police officers had been assigned to vacant dispatcher shifts).