

P.E.R.C. NO. 2015-9

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SOUTH PLAINFIELD,

Petitioner,

-and-

Docket No. SN-2014-052

PBA LOCAL 100,

Respondent.

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BOROUGH OF SOUTH PLAINFIELD,

Petitioner,

-and-

Docket No. SN-2014-053

PBA LOCAL 100, SOA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of South Plainfield for a restraint of binding arbitration of grievances filed by PBA Local 100 and PBA Local 100, SOA. The grievance asserts that the Borough violated the parties' collective negotiations agreement by not providing compensation or leave to police officers who worked during the October 2013 federal government shutdown. Finding that no police officers were assigned extra work or were required to work while others were granted holidays during the federal shutdown, and that the federal government shutdown did not intimately and directly affect the work and welfare of PBA members, the Commission holds that the grievances are not legally arbitrable.

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, DiFrancesco, Bateman, Coley,  
Yospin, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys  
(Lisa M. Fittipaldi, of counsel; Dayna R. Katz, on the  
brief)

For the Respondent, Detzky, Hunter & DeFillippo, LLC,  
attorneys (David J. DeFillippo, of counsel)

DECISION

On January 9, 2014 the Borough of South Plainfield filed two scope of negotiations petitions seeking restraints of binding arbitration of grievances filed by PBA Local 100 and PBA Local 100, SOA (collectively referred to as "PBA"). The grievances allege that the Borough violated the parties' collective

negotiations agreements when it did not provide additional leave time or compensation to police officers who worked during the October 2013 federal government shutdown. Because the officers are not federal law enforcement personnel and there has been no showing that, during the shutdown, South Plainfield police were assigned to duty at any federal facilities, we will restrain arbitration.

The Borough has filed briefs and exhibits. The PBA has filed a brief. Neither party has filed a certification. The following facts appear.

PBA Local 100 represents the Borough's patrolmen, and the parties are signatories to a collective negotiations agreement effective from January 1, 2011 through December 31, 2014. PBA Local 100 SOA represents the Borough's superior officers including sergeants, lieutenants, and captains, and the parties are signatories to a CNA effective from January 1, 2012 through December 31, 2015.

Article XVIII of the PBA Local 100 agreement and Article XVI of the PBA Local 100, SOA agreement are both entitled "Holidays" and contain this language:

It is hereby agreed that the Employee shall be entitled to each day declared as a holiday by the Governor of the State of New Jersey and/or the Mayor and Council of the Borough of South Plainfield as the same may pertain to municipal Employees and any additional time off which shall be authorized by any

executive or legislative order of federal, state or local government.

On September 30, 2013, the President of the United States ordered a federal government shutdown commencing October 1 due to the absence of appropriations. That federal government shutdown lasted from October 1 through October 17, 2013. On November 15, the PBA filed a joint grievance on behalf of both the patrolmen and superior officers units alleging that the Borough violated Articles XVIII and XVI of the parties' agreements, respectively, by not providing unit members who worked during the federal government shutdown with "additional time" or compensation. The Borough denied the grievance. On December 16, the PBA demanded binding arbitration of the grievance. This petition ensued.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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. See Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981).

Arbitration is permitted if the subject of the grievance 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).

The Borough asserts that the Commission previously found, in State of N.J. (Dept. of Corrections) and PBA Local 105, P.E.R.C. No. 2007-60, 33 NJPER 116 (¶41 2007), aff'd 34 NJPER 125 (¶54 App. Div. 2008), certif. den., 196 N.J. 595 (2008), that N.J.A.C. 4A:6-2.5(d) preempts a negotiated agreement for compensatory time for essential employees who work during emergency conditions because it limits compensation to regular pay.<sup>1/</sup>

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1/ N.J.A.C. 4A:6-2.5 Inclement weather or emergency conditions: State service

(a) The Governor or his or her designee, in consultation with the Office of Emergency Management, shall determine whether a period of inclement weather or other adverse situation requires the curtailment of State operations and services and whether emergency procedures need be implemented.

1. This determination shall include whether the curtailment shall be Statewide, regional, specific to one or more facilities, or limited in some other manner.

2. The Office of Emergency Management shall notify all State departments and agencies, and appropriate media outlets, when the curtailment of State operations and services and/or an Essential Employee Attendance Plan are to be implemented.

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(d) An essential attendance employee who is required to work in accordance with an Essential Employee Attendance Plan shall be compensated at the regular rate of pay for such work. See N.J.A.C. 4A:3-5 for overtime compensation for work performed by non-exempt employees in excess of the regular workweek.

The PBA asserts that N.J.A.C. 4A:6-2.5 does not preempt the union's contractual claim for additional time off related to the federal government shutdown because it applies only to state employees and not local civil service jurisdictions such as the Borough of South Plainfield. It argues that the regulations pertain only to the closing or curtailment of state operations as ordered by the Governor, whereas the instant dispute originates from a federal government shutdown ordered by the President.

Preliminarily, we note that where a negotiability dispute arises in the context of grievance arbitration our focus is on the grievance and the relief it seeks rather than only on the wording of contract articles that are identified in the grievance. See Somerset Raritan Valley Sewerage Authority P.E.R.C. No. 2001-26, 27 NJPER 11 (¶32006 2000) (contract language giving union right to question application of seniority does not permit binding arbitration contesting employer's assessment of qualifications for promotion). We focus on the issue framed by the grievance.

Just because the Borough is a political subdivision of the State and the State is a member of the federal union, does not thereby make the South Plainfield police federal law enforcement officers. Cf. Monmouth University and West Long Branch PBA Local No. 141, P.E.R.C. No. 2005-72, 31 NJPER 142 (¶62 2005), *aff'd*, 31 NJPER 142 (¶62 App. Div. 2006) (requirement that University

police meet State-established qualifications did not make them public employees).

There is nothing in the record to show that the October 2013 federal government shutdown either gave other South Plainfield employees a holiday on day(s) police officers were required to work, or that it resulted in extra work for the Borough's police.<sup>2/</sup> Employees may not seek compensation for time they were not on duty, on call or on leave. Morris Cty. Sheriff's Office v. Morris Cty PBA, Local 298, 418 N.J. Super 64 (App. Div. 2011).

The October 2013 federal government shutdown did not intimately and directly affect the work and welfare of the Borough's police.<sup>3/</sup> The grievances are not legally arbitrable.

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2/ The PBA has not filed a certification asserting that there are federal facilities with the Borough's boundaries that:

- (1) remained open despite the shutdown;
- (2) would normally be staffed by federal law enforcement personnel; and
- (3) Plainfield police had been assigned to these federal facilities in the absence of the federal officers.

3/ These cases held that the disputes did not intimately and directly affect employee work and welfare: Bor. of S. River, P.E.R.C. No. 2008-38, 33 NJPER 338 (¶126 2007) (requirement to complete separate forms to use vacation and compensatory time); Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 89-23, 14 NJPER 576 (¶19243 1988), (retraining arbitration over a grievance challenging the issuance of one paycheck, rather than two, to staff who performed extracurricular duties); City of Orange Tp., P.E.R.C. No. 2005-31, 30 NJPER 457 (¶1512004) (proposal to have overtime paid by separate check).

ORDER

The requests of the Borough of South Plainfield for restraints of binding arbitration are granted.<sup>4/</sup>

BY ORDER OF THE COMMISSION

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

ISSUED: August 14, 2014

Trenton, New Jersey

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<sup>4/</sup> Given the basis for our ruling, we need not decide whether the civil service regulation debated by the parties applies.