

P.E.R.C. NO. 2016-45

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST MILFORD,

Petitioner,

-and-

Docket No. SN-2009-079

WEST MILFORD MUNICIPAL EMPLOYEES GUILD,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township of West Milford's request for a restraint of binding arbitration of a grievance filed by the West Milford Municipal Employees Guild. The grievance contests the Township's temporary assignment of a patrol officer to the communications center on Mischief Night and Halloween. Finding that there were no dispatcher vacancies on those dates and there were no overtime opportunities to be allocated to a unit member or any other employee, the Commission holds that the dispute predominately involves the Township's non-negotiable staffing determination that an on-duty police officer may be assigned to assist civilian dispatcher with service calls.

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, The Corrigan Law Firm, attorneys  
(David F. Corrigan, of counsel)

For the Respondent, Kathleen Fantacone Mazzouccolo,  
Staff Representative

DECISION

On May 29, 2009, the Township of West Milford petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the West Milford Municipal Employees Guild. The grievance challenges the temporary assignment of a patrol officer to the Township Police Department's communications center on October 31, 2008. The grievance alleges that this action violated departmental policy on filling vacant dispatcher shifts, which, the Guild claims, required the assignment of a civilian dispatcher to the position on an overtime basis.

The parties have filed briefs and exhibits.<sup>1/</sup> These facts appear.

At the time the Township filed its petition, the Guild was the majority representative of non-supervisory white collar employees of the Township, including civilian dispatchers, and the Township and the Guild were parties to a collective negotiations agreement (CNA) effective January 1, 2005 through December 31, 2009.<sup>2/</sup> The CNA's grievance procedure provides for binding arbitration.

Article V of the Agreement, entitled "Hours and Overtime," provides in pertinent part:

The Employer has the sole authority to authorize overtime. Employees directed to work in addition to their normally scheduled work hours shall be compensated . . . at time and one-half their regular rate of pay for all hours in excess of eight (8) hours per day.

Another provision of the Agreement, pertaining only to dispatchers, states that they "shall work a shift consisting of

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1/ Neither party filed a certification to support the facts recited in their briefs as required by N.J.A.C. 19:13-3.6(f). However, in reviewing and comparing the parties' submissions, we find that the salient facts are not in dispute.

2/ AFSCME Council 51 became the certified representative as of March 31, 2009 and was copied on the brief filed by the Guild in this matter on September 4, 2015.

The 2005-2009 CNA was succeeded by an agreement effective through 2014. As of September 4, 2015, the Township and Council 51 were in negotiations for a successor agreement.

twelve (12) consecutive hours" and that "no double shifts shall be permitted."

The Police Chief usually assigns one dispatcher per shift to the communications center to answer telephone calls received by the Police Department over the course of the shift. Both civilian and sworn personnel have performed dispatching duties for the Department. On October 30 and 31, 2008, civilian dispatchers were assigned to the communications center. Anticipating additional calls for service those nights, Mischief Night and Halloween, respectively, the Chief assigned an on-duty police officer to the communications center to assist the civilian dispatcher working each night. The police officer was on light duty at the time.

On November 3, 2008, a civilian dispatcher filed a grievance that described the matter in dispute as follows:

I was not asked to work overtime on 10/31/08 for second dispatch position opening. A Patrolman on light duty was put on the desk instead . . .

The procedure for hiring overtime for the police desk is part time dispatchers, then full time dispatchers, then desk relief officers.

As the grievant later clarified, the procedure mentioned in the grievance was set forth in a memorandum issued by the Police Chief earlier that year. Referencing "Time Off Requests for Dispatchers," the memorandum's stated purpose was "to ensure that

all time off requests and the hiring of replacement Dispatchers is fair, equitable and consistent with the collective bargaining agreement." The document set forth procedures dispatchers were to follow when requesting to use vacation, compensatory, or personal leave time as well as procedures for "hiring" replacement dispatchers. The latter included this provision:

It shall be the policy to fill all vacant Dispatch shifts with a part time or full time Dispatcher, unless one is not available. A Police Officer trained as a Relief Call Taker will be used only if a Dispatcher cannot work, or for short periods of relief.

On November 7, 2008, the dispatcher's supervisor, Captain Coscia, replied to the grievant. At the outset, Coscia noted the difficulty of addressing the issue in terms of the CNA given that the grievant had not identified a particular contract provision that she believed had been violated. Turning to the policy mentioned in the Chief's memorandum, Coscia said that it was intended to deal only with vacant shifts caused by the absence of a scheduled dispatcher. Coscia concluded that he did not believe there had been any policy or contract violation. He then offered this explanation for the decision to assign the officer on light duty to the center:

This makes the officer available to both dispatcher needs and patrol needs[,] relieving the need for officers to be called in off the road for reports or questions requiring an officer's expertise.

Answering the grievance at the next step of the process, the Chief noted that the procedure for filling vacant dispatcher positions was not applicable as there was a full-time dispatcher assigned to and working the shift and no replacement was needed. The grievance was again denied at the third step, and on December 23, 2008, the Guild filed a request for binding arbitration. This petition ensued.<sup>3/</sup>

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 Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in *Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982):

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it

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<sup>3/</sup> After the Township filed its brief, the Guild requested and was granted a number of extensions of time to file its brief, which it did on September 4, 2015.

is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

We must balance the parties' interests in light of the particular facts and arguments presented. *City of Jersey City v. Jersey City Police Officers Benevolent Ass'n*, 154 N.J. 555, 574-575 (1998).

The Township argues that arbitration would unlawfully impinge upon its managerial prerogatives to determine whether to authorize overtime, the number of employees needed to staff its operations, and which personnel should be assigned to a particular task. While acknowledging that the Commission has held that the allocation of overtime opportunities among qualified employees is a mandatorily negotiable subject, the Township stresses that there was no overtime work to be allocated in this matter.

In response, the Guild states that it does not dispute that staffing and whether overtime is needed in a particular situation are managerial prerogatives. It adds that consistent with the latter determination, the CNA provides that the "Employer has the sole authority to authorize overtime." Nevertheless, it maintains that a factual dispute exists as to whether the police officer covered an entire shift or only occasional or short

periods of relief. That dispute, it argues, must be resolved before a determination can be made whether the Township followed its policy for covering a dispatch shift.

The Guild also states that after the Township filed its petition, there were additional grievances filed involving overtime and related contract provisions and that those grievances raise no issue of arbitrability. In reply, the Township states that its petition concerns only the subject grievance. Our decision only addresses the dispute referenced in the grievance that was fully briefed by the parties.

The Commission has consistently found that the allocation of overtime and procedures for selecting employees to work overtime are generally mandatorily negotiable and arbitrable. See, e.g., City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); City of Elizabeth, P.E.R.C. No. 80-80, 6 NJPER 14 (¶11008 1979); New Jersey Sports & Expo. Auth. and Local 560 IBT, Laborers' Local 472 and Laborers Int'l Union Local 734, P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd, NJPER Supp.2d 195 (¶172 App. Div. 1988).

In contrast, and as we stated in City of Long Branch, supra:

A public employer has a non-negotiable, managerial prerogative to determine the manning levels necessary for the efficient delivery of governmental services, particularly police services. This prerogative applies to deciding both the number of police officers on the force and the number of officers on any given tour.



These manning determinations in turn may interrelate to dictate the amount of overtime which will be worked. For example, a decision that no one is needed to replace an officer who is on vacation will mean that no off-duty officers will have the opportunity to work overtime by replacing the absent officer. Or, a decision that additional officers are or are not needed to meet a specific emergent situation will determine whether off-duty officers are called in for overtime. Because the determination of when overtime must be worked is inevitably controlled by the relationship between management's manning determinations and its obligation to deliver governmental services efficiently, a public employer may unilaterally mandate that a certain number of employees will work overtime.

If we believed that this dispute predominately involved the mandatorily negotiable issue of overtime allocation among unit employees, we would deny the Township's request. On this record, however, and given the absence of evidence that there was a dispatcher vacancy on the two dates in question, we find that the dispute predominately involves the Township's staffing determination that an on-duty police officer should be assigned to the communications center, not only to assist the civilian dispatcher with calls for service, but also to avoid the need for other officers to be called off the road to perform tasks requiring sworn personnel. These decisions are preeminently policy determinations that are beyond the scope of negotiations or binding arbitration. Accordingly, the Township's request to restrain arbitration is granted.

ORDER

The request of the Township of West Milford for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: December 17, 2015

Trenton, New Jersey