

P.E.R.C. NO. 2016-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ELIZABETH,

Petitioner,

-and-

Docket No. SN-2016-046

ELIZABETH SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

CITY OF ELIZABETH,

Petitioner,

-and-

Docket No. SN-2016-047

PBA LOCAL 4,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Elizabeth for a restraint of binding arbitration of grievances filed by the SOA and PBA contesting the implementation of a biometric timekeeping, attendance, and payroll system. The Commission holds that the City has a non-negotiable managerial prerogative to establish and implement new timekeeping procedures to verify attendance.

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, Lum, Drasco & Positan, LLC,
attorneys (Wayne J. Positan, of counsel; Daniel M.
Santarsiero, of counsel and on the brief; Elizabeth Y.
Moon, on the brief)

For the Respondent, Mets Schiro McGovern & Paris, LLP,
attorneys (James M. Mets, of counsel and on the brief;
David M. Bander, on the brief)

DECISION

On January 20, 2016 the City of Elizabeth (City) filed two
scope of negotiations petitions seeking restraints of binding
arbitration of grievances filed by the Elizabeth Superior
Officers Association (SOA) and PBA Local 4 (PBA). The grievances

allege that the City violated the parties' collective negotiations agreements (CNA) by implementing a biometric timekeeping, attendance, and payroll system.

The parties have filed briefs and exhibits. The City submitted the certification of Police Director James Cosgrove. The SOA and PBA did not submit a certification.^{1/} These facts appear.

The SOA represents the City's Police Department employees in the ranks of Captain, Lieutenant and Sergeant. The PBA represents the City's rank-and-file police officers. The City entered into collective negotiations agreements (CNA) with the SOA and PBA effective from July 1, 2009 through June 30, 2014. The grievance procedure ends in binding arbitration.

In October 2015, Cosgrove issued a Special Memorandum to all Police Department personnel notifying them that a new automated time, attendance, and payroll system would be implemented effective October 26, 2015. The newly implemented system requires all Captains, Lieutenants, Sergeants and Detectives assigned to the Detective Bureau including Juvenile and Narcotics to scan their finger at the beginning and end of each tour of duty to sign in and out of work. The Police Department previously relied upon these officers to submit handwritten time

^{1/} N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

and attendance records for themselves to their superiors prior to entry in the Police Officer Scheduling System. Cosgrove certifies that the previous manual timekeeping procedure was insufficient to accurately track and document the officers and detectives on duty on a given day or at a given time and raised suspicions that some people reported working when they had not. He certifies that these suspicions were confirmed in November 2015 when the newly implemented timekeeping system showed no superior officers or detectives signed in to work on Thanksgiving day. A majority of those officers had self-reported that they had worked the previous three years on Thanksgiving day. Cosgrove certifies that while the timekeeping system may provide the City with an easier and more accurate way of recognizing problems with tardiness and absenteeism among superior officers and detectives, not one officer has been disciplined for lateness or absences since the implementation of the timekeeping system.

On November 9, 2015, the SOA and PBA submitted grievances alleging that the new system "establishes an unjust, unreasonable and arbitrary and capricious rule/obligation upon certain officers," and violated several provisions of the CNA. On November 16, Cosgrove denied the grievances. On November 23, the SOA and PBA demanded binding arbitration. These consolidated petitions ensued.

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

As this dispute arises in the context of a grievance involving police officers or firefighters, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. A subject is mandatorily negotiable if it is not preempted by statute or regulation and it intimately and directly affects employee work and welfare without significantly interfering with the exercise of a management prerogative. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). A subject involving a management prerogative can still be permissively negotiable if agreement would not place substantial limitations on government's policymaking powers.

We and the courts have long held that a public employer has a managerial prerogative to establish and implement timekeeping procedures to verify that employees are at work when they are required to be. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Bd. Ass'n, 135 N.J. Super. 269 (Ch. Div. 1975), aff'd 142 N.J. Super. 44 (App. Div. 1976) (implementation of sign in/out sheet for teachers was not arbitrable); Plainfield Bd. of Ed., NJPER

Supp.2d 29 (§19 App. Div. 1974), certif. den. 66 N.J. 327 (1974) (requirement that employees use full name instead of initials when signing in/out was not arbitrable); Upper Tp. Bd. of Ed., P.E.R.C. No. 2012-56, 38 NJPER 357 (§121 2012) (directive that teachers indicate the times they sign in/out was not arbitrable); South Hackensack Bd. of Ed., P.E.R.C. No. 98-70, 24 NJPER 14 (§29009 1997) (Board's replacement of sign in/out sheets with time clocks for punching in/out was not arbitrable); Paterson State-Operated School Dist., P.E.R.C. No. 97-107, 23 NJPER 202 (§28097 1997) (directive that teachers indicate the times they sign in/out was not arbitrable); Butler Bor., P.E.R.C. No. 94-51, 19 NJPER 587 (§24281 1993) (requirement that employees punch in/out on time clocks for lunch was not arbitrable).

The PBA/SOA assert that the new timekeeping system will have significant effects on their unit members' terms and conditions of employment because it is being used only for Detective Bureau officers and therefore may result in unequal discipline as compared to other officers. The City responds that the non-detective patrolmen were already subject to a more formal roll call and that its decision to now institute an accurate time reporting system for Detective Bureau officers was prompted by the evidence of inaccuracies among those officers.

In North Bergen Bd. of Ed., P.E.R.C. No. 92-5, 17 NJPER 378 (§22177 1991), the Commission held that the Board's

implementation of time clocks for maintenance employees was not arbitrable, even though other unit members and employees continued to use sign in/out sheets. We held:

Since the use of time clocks is neither mandatorily negotiable nor arbitrable, a claim that the employer has discriminatorily instituted this requirement is also not arbitrable. Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983). But see Pennsauken (unequal application of disciplinary penalties caused by use of time-keeping methods is arbitrable).

[17 NJPER at 378]

The Pennsauken case referenced in North Bergen Bd. of Ed. and cited by the PBA/SOA likewise restrained arbitration despite the fact that the employer had only instituted time clocks at certain locations. Pennsauken Tp., P.E.R.C. No. 80-51, 5 NJPER 486 (¶10248 1979). Although we acknowledged the possibility that unequal application of disciplinary penalties could be arbitrable, we noted that “[t]he instant grievance, however, does not involve such an issue and, accordingly, the Commission grants the Township’s request for a permanent restraint of arbitration.” Id. at 487. Similarly, in the instant case, the PBA/SOA has not alleged or certified to any specific negotiable effects of the timekeeping system, but only speculates that the system may lead to unfair disciplinary treatment.

We therefore find that the PBA/SOA has not met the Paterson standard for mandatory or permissive negotiability because the finger scan requirement has at most a minimal effect on employee

work and welfare and allowing a challenge to the new timekeeping system would place substantial limitations on the City's governmental policymaking powers. See S. River Bor., P.E.R.C. No. 2008-38, 33 NJPER 338 (¶126 2007) (Borough's requirement that police officers fill out separate forms for vacation and compensatory time off requests was not permissively negotiable). Accordingly, the PBA/SOA's grievances challenging the City's implementation of a new biometric timekeeping, attendance, and payroll system are not arbitrable.

ORDER

The City of Elizabeth's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Eskilson recused himself. Commissioner Wall was not present.

ISSUED: May 26, 2016

Trenton, New Jersey