

P.E.R.C. NO. 2018-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY SHERIFF'S OFFICE,

Petitioner,

-and-

Docket No. SN-2018-015

PBA LOCAL 108A,  
SHERIFF SUPERIOR OFFICERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Union County Sheriff's Office's request for a restraint of binding arbitration of a grievance filed by PBA Local 108A, Sheriff Superior Officers contesting the transfer of weekend work of a Courtroom Security Division (CSD) Sergeant on an overtime basis to a Transportation Unit (TU) Sergeant on a straight time basis. Finding that there was no issue of qualifications and that the only issue was the economic question of whether the work would be performed on an overtime basis, the Commission holds that the dispute predominately involves the CSD Sergeants' interests in negotiating hours of work and rates of pay and is mandatorily negotiable.

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, Weiner Law Group (Douglas S. Zucker, of counsel and on the brief)

For the Respondent, Marc Abramson and Associates (Marc D. Abramson, on the brief)

DECISION

On September 12, 2017, the Union County Sheriff's Office (County) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 108A, Sheriff Superior Officers (PBA). The grievance contests the County's transfer of weekend work of a Courtroom Security Division (CSD) Sergeant on an overtime basis to a Transportation Unit (TU) Sergeant on a straight time basis. We deny the County's request for a restraint of binding arbitration.

The County filed briefs, exhibits and the certifications of Joseph Cryan, its Sheriff; Michael Frank, its Undersheriff; and Douglas S. Zucker, its attorney. The PBA filed a brief,

exhibits, and the certification of Frank S. Miller, its President. These facts appear.

The PBA represents all Sheriff's Superior Officers. The County and the PBA are parties to a collective negotiations agreement with a term of January 1, 2013 through December 31, 2015. The PBA asserts that the County violated Article VII, "Retention of Existing Benefits"; Article XII, "Call-In"; Article XIX, "Miscellaneous"; and Article XI, "Overtime."

Article XI, section 5 states, in pertinent part, that "[a]ll foreseeable overtime within one's assigned unit shall be equally distributed based upon the ability to perform the required task. . . ." Article XI, section 7 states, in pertinent part, that "[t]he Sheriff or his designee shall determine which units or officers shall perform any specialized task that may develop that does not clearly fall within the job responsibilities of a particular unit." The grievance procedure ends in binding arbitration.

The Sheriff's Department is compartmentalized into twelve units or divisions, each of which is under the supervision of an Undersheriff. CSD's primary responsibility is to transport prisoners to and from the County courts. TU's primary responsibility is to transport prisoners to other correctional institutions, area hospitals, psychiatric facilities and other

county or municipal courts. TU officers also serve as back up to the CSD.

The New Jersey Bail Reform and Speedy Trial Act (Bail Reform Law), N.J.S.A. 2A:162-15 et seq., became effective January 1, 2017 and requires, inter alia, that defendants make their first court appearance within 48 hours of their arrest. To comply with this requirement, certain County facilities which operate primarily on a Monday through Friday schedule were required to be open on the weekend.

As of October 31, 2016, the Sheriff established a new TU shift to address the additional prisoner transportation needs resulting from the implementation of the Bail Reform Law. Most TU officers work Monday through Friday, 8:00 a.m. through 4:30 p.m., with Saturdays and Sundays off. However, the new TU shift operates with two teams working four days on and four days off, with each shift running from 10:15 a.m. to 10:00 p.m. (Bail Reform Transportation Shift or BRTS). A Sergeant is assigned to supervise each of the teams.

The Sheriff certifies that because the Bail Reform Law requires the County courts to be open at least one weekend day each week, it became necessary to assign Sheriff's Officers to provide weekend courtroom security, and a Superior Officer, generally a Sergeant, to supervise those officers. He certifies that he initially planned to provide weekend courtroom security

with CSD officers who perform those same duties during the week. However, he attests that based on a May 2017 assessment, he found that TU officers could perform the weekend CSD duties during the early part of their shift and still have adequate time to perform their routine duties. Since TU officers were already working weekend hours due to the implementation of the BRTS, they were able to perform the CSD duties on a straight time basis. The Sheriff certifies that it made more sense, operationally and financially, to have the TU officers handle their routine work plus the CSD work, rather than splitting the work and incurring overtime costs.

Superior Officers do not bid for specific assignments, and are assigned based on the Sheriff's managerial judgment. The Undersheriff certifies that the Sheriff will assign a TU Superior Officer who has achieved a certain level of training and/or experience in the area, and are more versatile than CSD Superior Officers.<sup>1/</sup>

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1/ The Undersheriff certifies that the Sergeants who supervise the BRTS are Sergeant Richard Hugelmeyer and Sergeant Christian Martens. Overtime records for Sergeant Hugelmeyer show that between May 1 and October 11, 2017, he did not work any overtime on a Saturday. Overtime records for Sergeant Martens show that between May 1 and October 11, 2017, he worked overtime on six Saturdays, three of which he was covering for Sergeant Hugelmeyer, who was absent on a scheduled day off and three of which involved late pick-ups unrelated to courtroom security, for a total of five hours overtime over three days.

Miller certifies that the practice for over twenty-two years has been that overtime is only distributed within the unit in which overtime is needed unless there are no available employees within the unit, which happens rarely. He further attests that a TU Sergeant is not more qualified than a CSD Sergeant because the latter are regularly responsible for prisoner transports to and from the courts, regularly work with judges and correction officers, and are most familiar with courtroom procedures and County jail requirements. He further certifies that any overtime that does not fall within a specific unit, for example parade detail, is handled by a universal overtime list that is assigned by seniority. Miller disputes the Sheriff's assertion that the plan to have a CSD Sergeant perform the CSD weekend work on an overtime basis was an initial plan only.

The County argues that it has a managerial prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs, to assign duties within a job description, and to determine staffing and manning levels. It also asserts the reduction in overtime opportunities for the CSD Sergeant does not make the reassignment mandatorily negotiable.

The Association responds that this case is about the allocation of work and overtime opportunities, and not about employee qualifications.

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 contractual merits of the grievance or any contractual defenses the employer 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.

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). Thus, if a grievance is either mandatorily or 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. We must balance the parties' interests in light of the particular facts and arguments presented. *City of Jersey City v. Jersey City POBA*, 154 N.J. 555, 574-575 (1998).

In this matter, the critical issue is the third standard of the negotiability test set forth in *Paterson Police PBA No. 1*, 87 N.J. at 92-93. The question before us is whether the Sheriff's decision to have a TU Sergeant perform the CSD weekend work on a straight time basis, instead of having a CSD Sergeant perform the

work on an overtime basis, is a mandatorily negotiable issue. Applying the Paterson balancing test, we hold that this dispute predominately involves the CSD Sergeants' interests in negotiating hours of work and rates of pay, issues that are mandatorily negotiable.

It is well-settled that rates of pay and work hours are the most fundamental terms and conditions of employment. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 594 (1980). In N.J. 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), the grievances contended that the Authority deprived senior full-time employees of weekend work hours at overtime rates and instead used junior full-time and/or part-time casual or seasonal employees to work weekends at straight-time rates. We found that the issue was mandatorily negotiable because the Authority's interests were primarily economic. Moreover, the Authority retained the sole right to determine when its services will be offered, what work must be done, how many employees are needed to staff its operations, and what qualifications an employee must possess in order to work. See also Rutgers, The State University and AFSCME, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd NJPER Supp.2d 132 (¶113 App. Div. 1983) (finding that the transfer

of dispatch work to police officers for solely economic reasons is mandatorily negotiable).

Here, the County has determined, and the PBA does not dispute, that CSD duties must be performed on the weekend due to the implementation of the Bail Reform Law, the number of officers needed to perform the CSD weekend duties, and their qualifications. The only question that remains is an economic question of whether that work will be performed by a CSD Sergeant on an overtime basis or a TU Sergeant on a straight time basis.

A public employer has a managerial prerogative to assign the best qualified employees to particular jobs. Ocean Tp. Bd. of Ed., P.E.R.C. No. 2017-45, 43 NJPER 325 (¶92 2017), recon. den. P.E.R.C. No. 2017-53, 43 NJPER 360 (¶103 2017). However, given that a CSD Sergeant supervises the transport of prisoners to and from the courts during the week, the County's assertion that a TU Sergeant becomes more qualified to perform those same duties on the weekend is implausible.

The County relies on Union Cty., P.E.R.C. No. 2010-28, 35 NJPER 389 (¶130 2009) to assert that it has a managerial prerogative to assign duties within a shift and job description. Union Cty. involved a fully-trained officer being reassigned from his regular post that he bid for to cover a vacancy in another post because no other qualified officers were available. The County then covered the fully-trained officer's vacancy with an

officer from the Supplemental Relief Post (SRP), a group of correction officers available to fill temporarily vacant posts. The PBA filed a grievance asserting that the seniority provisions of the contract relating to shift bidding and overtime had been violated. We denied the County's request to restrain arbitration to the extent the PBA's grievance involved situations where employees had their shifts changed to avoid the need to fill posts on an overtime basis. We granted the County's request to restrain arbitration to the extent the PBA's grievance involved a change in assignment within a shift to avoid overtime costs and to assign regularly scheduled correction officers to positions for which they are qualified. Union Cty. is distinguishable from the instant matter because we found that the County's decision to reassign officers was, to some degree, based on its managerial prerogative to have the best qualified officers perform particular jobs. No such interest is present here. The record also does not support that the County's managerial prerogative to determine staffing and/or manning levels has been triggered.

The County has not established any significant interference with its managerial prerogatives to preclude arbitration. The issue presented in this matter is mandatorily negotiable. The arbitrator can determine whether the PBA has correctly asserted that based on contract language and past practice, the CSD

weekend work should remain within that unit and not be allocated to any other unit.

ORDER

The request of the Union County Sheriff's Office for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners, Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: May 31, 2018

Trenton, New Jersey