

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Petitioner,

-and-

Docket No. SN-95-25

HOBOKEN POLICE SUPERIOR OFFICERS'  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Hoboken Police Superior Officers' Association against the City of Hoboken. The grievance claims that the employer violated the parties' collective negotiations agreement when it denied the employee overtime pay for hours worked as Emergency Management Coordinator, before, during and after a snow storm. The Commission finds that such a compensation claim is mandatorily negotiable in the abstract. The employer asserts that the employee is not a member of the Association's negotiations unit when he acts as Emergency Management Coordinator and that therefore a claim seeking overtime compensation for hours worked in that capacity is not arbitrable. The Commission finds that resolution of that question depends on an interpretation of the parties' contractual recognition clause, and a factual determination on the merits as to whether or not the employee was performing duties as a police officer within the meaning of the collective negotiations agreement. Those questions properly belong to the arbitrator.

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, Murray, Murray & Corrigan, attorneys  
(Robert E. Murray, of counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, attorneys (Jacqueline Jassner,  
of counsel)

DECISION AND ORDER

On September 20, 1994, the City of Hoboken petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by an employee represented by the Hoboken Police Superior Officers' Association. The grievance claims that the employer violated the parties' collective negotiations agreement when it denied the employee overtime pay for hours worked as Emergency Management Coordinator, before, during, and after a snowstorm.

The parties have filed certifications, exhibits and briefs. These facts appear.

The City has recognized the Association as the exclusive representative of its "supervisory positions within the Hoboken

Police Division with the rank of Sergeant, Lieutenant and Captain." The City and the Association entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration. Article XX of that agreement is entitled "Overtime" and requires overtime payments at the rate of 1 1/2 an officer's regular salary under specified circumstances.

Mario Mercado is a police sergeant and receives a salary for that position. He also holds the position of Garage Superintendent in the Bureau of Vehicular Maintenance Repair, a position for which he receives a salary increment that raises his total compensation to that of a police lieutenant.<sup>1/</sup> In addition, he holds a position as Emergency Management Coordinator, a position for which he receives a salary increment that raises his total compensation to that of a police captain.

By statute, the employer may appoint any resident to be Emergency Management Coordinator and may use volunteers. Under the City's Municipal Code, however, that position is within the ranks of the Police Department and must be paid. Under the City's Code, the Deputy Emergency Management Coordinator may be any City employee. The City has appointed a fire captain to the position. Once an emergency is declared, the local Emergency Management Coordinator reports to the County Emergency Management Coordinator who reports to the State Emergency Management Coordinator.

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<sup>1/</sup> That bureau was recently transferred from the Department of Administration, Division of Police to the Department of Environmental Services.

In February 1994, a snowstorm required Mercado to work as Emergency Management Coordinator. Mercado filed four requests seeking a total of 51 hours of overtime pay.

While the police chief initially approved Mercado's requests, the Business Administrator questioned them and asked for details. He specifically questioned the amount of hours worked; whether the stipend received for working as Emergency Management Coordinator already covered the additional hours; and whether overtime payments should be based on Mercado's stipend as Emergency Management Coordinator or his Garage Superintendent salary or his entire salary.

Mercado responded that the work he had performed entitled him to overtime pay by federal law and the salary directive entitling him to the pay rate of captain. The Business Administrator denied payment.

Mercado filed a grievance and the employer denied it. The Association demanded arbitration and this petition ensued. A Commission designee denied the employer's request for a temporary restraint of arbitration pending a final decision. I.R. No. 95-6, 20 NJPER 420 (¶25215 1994). Mercado has also filed a lawsuit and an EEOC charge seeking overtime compensation.

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 this grievance or any contractual defenses the employer may have.

The grievance seeks overtime compensation. Such a compensation claim is mandatorily negotiable in the abstract. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); State of New Jersey, P.E.R.C. No. 86-139, 12 NJPER 484 (¶17185 1986).

The employer asserts that Mercado is not a member of the Association's negotiations unit when he acts as Emergency Management Coordinator and that therefore a claim seeking overtime compensation for hours worked in that capacity is not arbitrable. That assertion depends on an interpretation of the parties' contractual recognition clause, and a factual determination on the merits as to whether or not Mercado was performing duties as a police officer within the meaning of the collective negotiations agreement. We do not decide these questions which properly belong to the arbitrator instead of us. Ridgefield Park.

The employer also asserts that the Association is barred from pursuing a contractual claim in arbitration because Mercado has pursued other claims in court and before the EEOC. But these statutory and contractual rights are independent and each may be reviewed in the appropriate tribunal. Fair Lawn Bd. of Ed. v. Fair

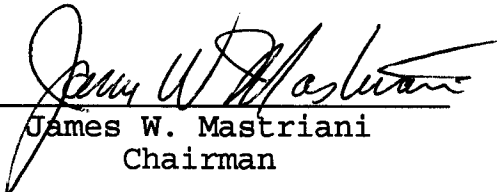
Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980); see also  
N.J.S.A. 34:13A-5.3<sup>2/</sup>

We therefore decline to restrain arbitration.

ORDER

The request of the City of Hoboken for a restraint of  
binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz,  
Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: September 21, 1995  
Trenton, New Jersey  
ISSUED: September 22, 1995

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<sup>2/</sup> The interim relief decision in City of Jersey City, I.R. No. 88-1, 13 NJPER 653 (¶18246 1987), is distinguishable because it involved a disciplinary action that could not be arbitrated under N.J.S.A. 34:13A-5.3 given an alternate statutory appeal procedure.