

P.E.R.C. NO. 94-111

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BELLEVILLE,

Petitioner,

-and-

Docket No. SN-94-63

BELLEVILLE MUNICIPAL EMPLOYEES  
ASSOCIATION/ESSEX COUNCIL LOCAL 32,  
OPEIU, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township of Belleville's request for a restraint of binding arbitration of a grievance filed by the Belleville Municipal Employees Association/Essex Council Local 32, OPEIU, AFL-CIO to the extent, if any, the grievance may seek to require the Township to make a certain number of standby assignments on weekends. The Commission declines to restrain arbitration of any claim that the employer violated the contract by reallocating standby assignments to non-unit employees.

P.E.R.C. NO. 94-111

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BELLEVILLE,

Petitioner,

-and-

Docket No. SN-94-63

BELLEVILLE MUNICIPAL EMPLOYEES  
ASSOCIATION/ESSEX COUNCIL LOCAL 32,  
OPEIU, AFL-CIO,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C., attorneys  
(Mark S. Ruderman, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,  
attorneys (Robert A. Fagella, of counsel)

DECISION AND ORDER

On January 14, 1994, the Township of Belleville petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Belleville Municipal Employees Association/Essex Council Local 32, OPEIU, AFL-CIO. The grievance asserts that the employer violated provisions in the parties' collective negotiations agreement concerning standby time.

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

Local 32 represents the Township's non-supervisory employees, including employees in the Public Works Department. The parties entered into a collective negotiations agreement. Article X

is entitled Overtime, Holiday, Emergency Call, Standby Compensation. Sections 3, 4 and 5 provide:

Section 3. Overtime, standby time, weekend time and holiday time shall be given to regular department employees provided said employees had worked two (2) full days immediately preceding said overtime, stand-by time, weekend time and holiday time, or was on authorized leave.

Section 4. Employees who sign up for stand-by time shall be paid at a rate based on the following:

Starting at Friday - 4:00 P.M. to 11:00 P.M.

Saturday 8:00 A.M. to 11:00 P.M. - Sunday 8:00 A.M. to 11:00 P.M. (Compensation to be \$222.00 per employee for 1988 for entire weekend of time so specified and retroactive to January 1, 1988, \$234.00 for 1989 and \$248.00 for 1990).

Section 5. Preference for the distribution of overtime work shall be managed by the Department Supervisor on a seniority basis....

The grievance procedure ends in binding arbitration of contractual disputes.

Before May 7, 1993, the employer performed any emergency work on weekends by calling in employees who had volunteered to remain at home and be on standby that weekend. Two employees in Local 32's unit were placed on standby each week. In return for being on-call during the weekend, each employee would receive \$248.00.

On May 7, 1993, the employer stopped allowing employees in Local 32's unit to volunteer for and receive standby assignments and

pay. According to Local 32, standby assignments and pay were given instead to other employees outside Local 32's negotiations unit.

Local 32 filed a grievance. That grievance asked that the employer reinstate the practice of allocating standby assignments to employees in Local 32's negotiations unit.

The employer denied the grievance and Local 32 demanded arbitration. This petition ensued.

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.

A public employer need not negotiate over its staffing levels. See, e.g., New Jersey Sports & Exposition Auth., P.E.R.C. No. 90-62, 16 NJPER 46 (¶21022 1989); Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (¶19123 1988); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983). Thus, an employer may determine that it does not need any employee on standby for weekend work. We

will therefore restrain binding arbitration to the extent, if any, that the grievance may seek to require the employer to make a certain number of standby assignments on weekends.


If, however, the employer determines that some standby assignments are necessary, the allocation of those assignments among qualified employees is mandatorily negotiable. New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd App. Div. Dkt. No. A-4781-86T8 (5/25/88); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). A majority representative may also seek to preserve work assignments traditionally performed by negotiations unit employees. Bergen Cty., P.E.R.C. No. 92-17, 17 NJPER 412 (¶22197 1991); Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. 3651-78 (7/1/80). Local 32 alleges that the employer did not discontinue standby assignments, but rather reallocated them to employees outside the negotiations unit. A claim that the employer violated Article X by reallocating standby assignments to non-unit employees is within the scope of negotiations. We therefore decline to restrain arbitration of any such claim.

#### ORDER

The request of the Township of Belleville for a restraint of binding arbitration is granted to the extent, if any, the

grievance may seek to require the Township to make a certain number of standby assignments on weekends.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: April 28, 1994  
Trenton, New Jersey  
ISSUED: April 29, 1994