

P.E.R.C. NO. 98-162

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALLINGTON,

Petitioner,

-and-

Docket No. SN-98-9

PBA LOCAL 321,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Wallington for a restraint of binding arbitration of a grievance filed by PBA Local 321. The grievance contests a police director's directive concerning overtime assignments. The Commission concludes that although the allocation of overtime is generally negotiable, a public employer has a right to deviate from a negotiated allocation system when necessary to effectuate governmental policy. The Commission finds that the employer has presented sufficient evidence to show that enforcement of this alleged contractual right would substantially limit its right to provide the supervision it deems appropriate.

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.

P.E.R.C. NO. 98-162

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALLINGTON,

Petitioner,

-and-

Docket No. SN-98-9

PBA LOCAL 321,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C., attorneys
(Joel G. Scharff, on the brief)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On July 25, 1997, the Borough of Wallington petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by PBA Local 321. The grievance contests a police director's directive concerning overtime assignments.

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

The PBA represents the Borough's police officers, including patrol officers, sergeants and lieutenants. The Borough and the PBA are parties to a collective negotiations agreement effective January 1, 1994 through December 31, 1996. The grievance procedure ends in binding arbitration.

On September 1, 1996, Rocco Montesano became the Borough's police director. Before his appointment, the police department consisted of one deputy chief, one lieutenant, one sergeant, one acting sergeant, and several patrol officers. Patrol officers replaced sergeants on shifts and functioned as patrol supervisors. Assignments to patrol supervisor functions were made according to seniority.

Montesano believed that the lack of a supervisory command structure resulted in patrol officers being in charge of shifts they patrolled. He therefore reorganized the police department to provide for a command and patrol structure and promoted patrol officers into first-line supervisory positions. The department now has two lieutenants and five sergeants. The deputy chief has since retired and that position is vacant. The director also intends to recommend adding an additional sergeant and creating the position of captain. All supervisors have now received supervisory training at police academy schools.

On September 12, 1996, the deputy chief issued a memorandum to all supervisors. The memorandum states:

When overtime is required to replace an officer who is on sick leave you will direct that the replacement shall be an officer of comparative rank. Any superior can replace another superior. Patrol officers will be replaced by patrol officers. Except in cases of emergency an officer will not replace a Superior nor the opposite.

On September 27, 1996, the PBA filed a grievance asserting that the directive violated the contract by unilaterally

changing the overtime procedure. The grievance cited Article XXXVIII, entitled "Priority for Overtime. That article provides:

Overtime will be offered to regular full time Officers first, before it is offered to any other person, and said overtime shall be offered based on Departmental seniority rather than rank sequence of a posted schedule required where each Employee indicates on the posted schedule their interest in working specific overtime days. All overtime is subject to approval of the Chief of Police or the Tour Commander.

The grievance was not resolved and on November 22, 1996, the PBA demanded arbitration.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the parties 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 (1981), outlines the steps of a scope of negotiations analysis for issues involving firefighters:

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. 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.
[87 N.J. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute 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). In this case, preemption is not an issue so Paterson bars arbitration only if the agreement alleged would substantially limit governmental policymaking powers.

The PBA argues that the Borough has eliminated the use of seniority as the dispositive consideration in assigning overtime.

It further argues that allocation of overtime assignments is mandatorily negotiable unless the assignment requires an officer with "special skills." It contends that patrol officers have been serving as supervisors for many years and that the Borough has not presented any evidence to demonstrate that serving as a supervisor requires special skills.

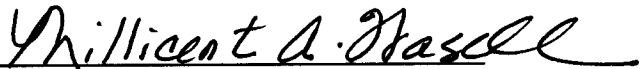
The Borough argues that the new director has created a cadre of trained supervisors to better manage operations of the patrol division. It urges us to protect its right to determine how and when patrol officers are going to be supervised.

Although the allocation of overtime is generally negotiable, a public employer has a right to deviate from a negotiated allocation system when necessary to effectuate governmental policy. City of Camden, P.E.R.C. No. 94-63, 20 NJPER 50 (¶25017 1993); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). Compare Irvington PBA Local No. 20 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980) (employer had prerogative to change shifts to provide supervision of patrol officers on midnight shift). The employer has presented sufficient evidence to convince us that enforcement of this alleged contractual right would substantially limit its right to provide the supervision it deems appropriate. Accordingly, we restrain arbitration.

ORDER

The request of the Borough of Wallington for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: June 25, 1998
Trenton, New Jersey
ISSUED: June 26, 1998