

P.E.R.C. NO. 94-100

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SOUTH BRUNSWICK,

Petitioner,

-and-

Docket No. SN-94-36

SOUTH BRUNSWICK PBA LOCAL 166,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by South Brunswick PBA Local 166 against the Township of South Brunswick. The grievance asserts that the employer violated the parties' collective negotiations agreement when it increased the minimum staffing levels for the uniformed patrol division. A public employer has a non-negotiable right to determine the number of police officers to be on duty at any one time.

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Appearances:

For the Petitioner, Ruderman & Glickman, P.C., attorneys
(Mark S. Ruderman, of counsel; Scott A. Eskwitt, on the
brief)

DECISION AND ORDER

On October 8, 1993, the Township of South Brunswick petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by South Brunswick PBA Local 166. The grievance asserts that the employer violated the parties' collective negotiations agreement when it increased the minimum staffing levels for the uniformed patrol division.

The Township has filed exhibits and a brief. Local 166 did not respond. These facts appear.

Local 166 represents the patrol officers and detectives in the Township's police department. The parties entered into a collective negotiations agreement effective from January 1, 1991

through December 31, 1993. The grievance procedure ends in binding arbitration.

On April 7, 1993, a police department memorandum entitled Minimum Coverage was issued. The memorandum stated:

Due to the Building Security problem and the Department Personnel problem, minimum coverage will be four men plus a Station Commander.

No vacation, comp, administrative days, write-in personal days, etc., will be granted unless this coverage is available.

According to the employer's attorney, a theft in the municipal building earlier in 1993 triggered the increase in staffing levels.

On April 24, 1993, Local 166 filed a grievance. It asserted that the employer had violated several provisions of the parties' contract by increasing the minimum coverage of the uniformed patrol division from four officers (one supervisor and three district officers) to five officers (one supervisor, one station officer and three district officers). The grievance specifically asserted that the increase in staffing levels unreasonably restricted the use of vacation time; discriminated against officers in the uniformed patrol division; unduly inconvenienced members; changed working conditions without prior notice; violated past practices and constituted an unfair practice. The grievance requested that officers who used personal days when vacation days were denied should have their personal days recredited; vacation requests should be automatically granted if

requested at least eight days in advance, and vacation requests within the eight day period should be subject to the new minimum staffing levels.

This grievance was denied. Local 166 demanded binding arbitration and this petition ensued.

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 employer may have.

A public employer has a non-negotiable right to determine the number of police officers to be on duty at any one time.

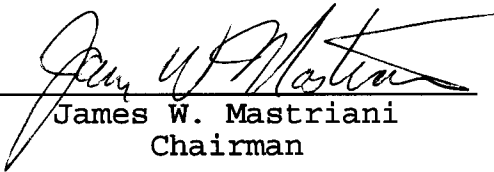
Township of Middle, P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987).

We therefore restrain arbitration of this grievance contesting the employer's minimum staffing levels. Absent any specific dispute over a denial of leave time, we will not speculate on the negotiability or arbitrability of such a dispute.

ORDER

The request of the Township of South Brunswick for a restraint of binding arbitration of this grievance contesting the employer's minimum staffing levels is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Goetting abstained from consideration. Commissioner Bertolino was not present.

DATED: March 29, 1994
Trenton, New Jersey
ISSUED: March 30, 1994