

P.E.R.C. NO. 94-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-93-78

LOCAL 788, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains arbitration of a grievance filed by Local 788, International Association of Firefighters, AFL-CIO against the City of Camden to the extent the agreement alleged would prohibit the City from determining that overtime positions require special skills and qualifications and from denying those overtime positions to unqualified employees before employees report for duty at a particular company.

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Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel and Regina Waynes Joseph, on
the brief)

For the Respondent, Tomar, Simonoff, Adourian & O'Brien,
attorneys (Mary L. Crangle, of counsel)

DECISION AND ORDER

On March 11, 1993, the City of Camden petitioned for a
scope of negotiations determination. The City seeks a restraint of
binding arbitration of a grievance filed by Local 788, International
Association of Firefighters, AFL-CIO. The grievance asserts that
the City violated the parties' collective negotiations agreement
when it discontinued a longstanding practice of allowing
firefighters to choose their overtime assignments.

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

Local 788 represents the City's uniformed firefighters.
The parties entered into a collective negotiations agreement
effective from January 1, 1990 through December 31, 1992. Article V

requires that overtime "be distributed as equitably as may be practical within the bargaining unit." Article XI permits the City to "establish and enforce reasonable and just rules and regulations in connection with its operation of the Fire Department and maintenance of discipline," provided such rules and regulations do not conflict with the parties' contract and subject to grievances contesting the reasonableness and propriety of the rules and regulations. The grievance procedure ends in arbitration.

The City is a Civil Service community. Its fire chief supervises two deputy chiefs. There are also 12 to 14 battalion chiefs who supervise the 11 fire companies -- composed of eight engine companies and three ladder companies -- and the one rescue company. At normal strength there are four firefighters and one captain on each company shift. Fire companies work on a platoon system, rotating 10 hour day and 14 hour night shifts. Firefighters serve under a Civil Service job description.

Each fire company operates one piece of fire equipment. Engine Companies 1 and 6, Ladder Company 1, the Rescue Company and Battalion 1 offices are located at fire headquarters on 4th and Arch Streets. Ladder Company 2, Engine Company 10, and Battalion 3 offices are located at Morgan Boulevard. Engine Companies 3 and 8 are located at 6th and Kaighn Avenues. Ladder Company 3, Engine Company 9 and Battalion 2 offices are located at 27th and Federal Streets. Engine Company 7 is located at Mt. Ephraim and Kaighn Avenues while Engine 11 is located at 27th and Hayes Streets.

Roll call is conducted at the beginning of the day shift (8:00 a.m.) and of the night shift (6:00 p.m.). Staffing levels are then balanced; if a company is at full strength, one of its firefighters is deployed to a shorthanded company. After this process has been completed, any necessary overtime assignments are made by Battalion 1.

On August 10, 1992, the fire chief issued a memorandum entitled Manning Procedures - Personnel Assignments to all fire personnel. The memorandum noted that as of August 1, 1992, firefighters and officers working in the Rescue Company had to possess an Emergency Medical Technician (EMT) certification and had to be Rescue Qualified (RQ). The memorandum then stated:

In manning the Rescue Company on a day to day basis through either overtime and/or details, the Battalion shall no longer give members a choice of assignment. Qualified members shall be ordered to [overtime or detail] duty in the Rescue Company as appropriate. As often as possible, regularly assigned Rescue personnel shall be utilized to fill overtime positions in the Rescue Company.

Additionally and consistent with the foregoing policy for Rescue manning, the long standing courtesy of giving members a choice of duty assignments in overtime calling for all other units is no longer feasible. With increasing frequency this practice has become counter productive to efficient operations and continues to pose undue hardship upon the Department particularly in matters of expediency for staffing as well as company operations.

Especially with the advent of newer specialized apparatus and the Department's increased dependency upon overtime staffing for operations, personnel that are otherwise less skilled [or in

some instances unskilled] have in the past been permitted to accept overtime tours in units with apparatus and equipment which they are incapable of operating. Obviously the Department cannot function under such conditions.

In many instances and for reasons which remain unclear, personnel already on duty at a particular unit [and quite often their regularly assigned unit] will arbitrarily if given the choice, accept overtime in another unit unnecessarily expanding the relief process and frequently contributing to the problem. To improve overall efficiency in both staffing and operations it is necessary to modify the overtime policy to facilitate manning so that as often as possible, square pegs are placed in square holes.

Also effective immediately, the courtesy of affording members a choice of where to work during overtime assignments shall be discontinued. All overtime assignments shall be made at the assigned direction of the Battalion Chief relative to [1] operations and [2] expediency of relief. Wherever possible as often as possible, members will be given overtime assignments in their regularly assigned unit.

When not possible, members shall be assigned to units having apparatus which are similar or the same as their regularly assigned unit [i.e. Engine Companies 8 and 9], or to positions which they are deemed qualified to fill; or the unit in which they are presently working at the time of overtime call in order to expedite relief - not necessarily in that order. Personnel who may be regularly assigned to an Engine Company but may be otherwise skilled as tillerman shall be assigned accordingly as the need arises. Likewise Company Officers shall be assigned to overtime duty in their regularly assigned units as often as possible.

In all instances, attending Battalion Chiefs shall be responsible for the assignment of personnel in all overtime assignments consistent with the enclosed guidelines. Further in assuming assignment responsibilities, Chief Officers will be held accountable by the Fire Administration for the direction and quality of

their discretion in the course of making the assignments. Likewise in matters of detail personnel, Fire Fighters will be assigned rather than given a choice of units based upon the direction of the Company Officer and the determined needs of the Battalion HQ for the particular tour of duty. [Emphasis and brackets in original]

On August 17, 1992, Local 788 filed a class action grievance. The grievance asserted that the City had violated Articles V and XI by changing the longstanding practice concerning overtime assignments. According to Local 788, the longstanding practice was to offer overtime to firefighters in rotation, with each firefighter being given the option to select from all available overtime assignments and locations and with the battalion chief having the reserved authority, after overtime assignments were made, to transfer firefighters among various companies if special skills or qualifications were required.

The fire chief denied the grievance. He wrote, in part:

The directive dated 8-10-92 is intended to promote better efficiency in operations and particularly the safe and effective operation of various equipment and services throughout the Fire Department. In the past and more recently with increasing frequency, Fire Fighters when given a choice of overtime duty assignments have often chose duty in units where they were incapable of functioning due to a lack of both skill and/or experience.

Particularly at fire companies that have specialized apparatus and equipment or specialized functions, entire crews of overtime personnel have reported to duty [by choice] and then have been unable to operate such equipment or functions thereby posing an undue operational hardship upon the Department not to mention serious potential liability to city government

relative to its mission for providing reliable public safety services. Indeed, the Local #788 Union President who has personally and repeatedly demonstrated a long standing aversion to water rescue operations and services [due to a self acknowledged water phobia] has himself on occasions voluntarily chosen overtime duty in the Rescue Company which is primarily responsible for all water rescue operations. The Union President's self appointed assignment to that unit seriously impacted upon the unit's efficiency and mission in the event of a waterborne emergency.

The aggrieved directive is designed to prevent such inadvertent deficiencies from occurring. Obviously the past practice and courtesy of allowing members to choose their overtime duty assignments has proven adverse to the interests of effective operations and reliable public safety. As an inherent management right, the matter of assigning personnel duties and designating duty assignments remains a necessary measure for ensuring safe and efficient operations. Additionally, the subject directive has not altered nor impacted upon the prior equity and distribution of overtime duty as required by the contractual agreement. [Emphasis and brackets in original]

The business administrator concurred with the fire chief.

Local 788 demanded binding arbitration. This petition ensued.

The fire chief submitted an affidavit on the City's behalf. He asserts that it was necessary to end the practice of allowing firefighters to choose overtime duty assignments and locations because with increasing frequency firefighters had been choosing duty in units where they lacked skill and experience and thus could not function. The chief stated that the public safety had been endangered because companies had been placed out of service while commanders replaced unqualified firefighters.

Attached to the chief's affidavit are memoranda from six battalion chiefs and five captains citing instances in which firefighters had chosen overtime assignments for which they were not qualified, thus necessitating reassignments. Examples cited include firefighters choosing duty in ladder 1 snorkel, but not being able to drive or operate the specialized equipment; firefighters choosing overtime in truck companies, but not being able to drive; firefighters choosing overtime in ladder companies and then informing the commander that they feared climbing ladders; and firefighters choosing overtime in ladder or engine companies, but not being unable to drive or tiller the ladder, place the aerial ladder in service, or operate pumps. One battalion chief reported that he had instructed a captain to place his company out of service for 1 1/2 hours while unqualified firefighters were trained on how to use company apparatus and that another fire engine was out of service for 25 minutes.

Thirteen fire captains, two battalion chiefs and Local 788's president submitted affidavits on Local 788's behalf. The captains uniformly assert that they have never had a problem with unqualified firefighters choosing to work overtime in their companies and that they have never had to place their companies out of service because of unqualified personnel. Some captains noted that in the rare instances where special skills or qualifications had been needed, battalion chiefs had exercised their authority to make reassignments and exchanges quickly without causing any

operational problems. The captains also assert that all firefighters are cross-trained so that they are familiar with all firefighting equipment.

One battalion chief asserts that he served as a captain for 23 years before becoming a battalion chief in December 1992, after the fire chief's order. He did not recall any operational problems caused by firefighters choosing their overtime assignments; in one instance where a firefighter could not operate a new piece of equipment, an exchange was made with another firefighter at the same location.^{1/} The other battalion chief asserts that he assigned overtime as chief of battalion 1 for seven years; no significant problems were caused by firefighters choosing their overtime assignments and locations; where special skills had been required, inter-battalion transfers had been accomplished quickly and easily; while companies had been placed out of service to effectuate such transfers, fire companies often go out of service for a variety of reasons such as repairs and training and the maximum time lost was five minutes; and extensive cross-training has ensured that all firefighters are qualified to work anywhere in the City.

Local 788's president asserts that he has been a firefighter for over 19 years; he was never made aware of any operational difficulties caused by permitting firefighters to select

^{1/} This battalion chief was one of those who wrote to the chief citing instances in which personnel had to be shifted to ensure that equipment could be operated.

overtime assignments and locations; most firefighters choose to work in their regular company, but some choose to work elsewhere for a variety of reasons, including the desire to work in less busy companies; the battalion chief has transferred firefighters where special skills or qualifications are required; cross-training has been extensive; and since the fire chief's directive, firefighters in engine companies have been limited to overtime assignments in engine companies and firefighters assigned to ladder companies have been limited to overtime assignments in ladder companies.

The City's chief training officer has submitted a reply affidavit on the City's behalf. He asserts that in May 1993, firefighters serving in engine companies were tested on different aerial apparatus used by ladder companies and over half of the firefighters failed. The City has also submitted a May 1993 memorandum entitled Overtime Distribution from four battalion chiefs to the fire chief. The memorandum states that no firefighter has been denied an available overtime opportunity for any reason and that "in instances where overtime personnel reached in normal rotation may be incapable or unqualified to fill certain required positions, the Battalion has routinely made necessary adjustments through either personnel details or designated overtime assignments to facilitate staffing without denying any member the opportunity to work."

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.

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 App. Div. Dkt. No. A-3664-81T3 (4/28/83). In this case, preemption is not an issue so Paterson bars arbitration only if the agreement alleged would substantially limit governmental policymaking powers.

In City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982), we distinguished between a police department's prerogative to require employees to work overtime and its duty to negotiate over the allocation of overtime opportunities among employees. However, we added:

Even though the allocation of overtime is a generally negotiable subject, there are still specific limitations on negotiability designed to insure that the employer will obtain a sufficient number of qualified employees to perform the necessary overtime tasks. Thus, if an urgent situation necessitates that the police department meet its manpower needs without instant compliance with the negotiated allocation system, it has the reserved right to make the necessary assignments to protect the public interest. In re Borough of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981). Also, if an employer needs a particular employee with special skills and qualifications to perform a specific overtime task, it may order that individual to work the overtime and thus insure that its needs are met. In re Local 195 and State of New Jersey, 88 N.J. 383, 8 NJPER 13129 (1982). In addition, an

employer may reject an employee's request to work overtime, despite a negotiated system distributing overtime on a voluntary basis, if that employee is unqualified or physically incapable of doing the required work. In sum, the allocation of overtime is a mandatory subject of negotiations, provided that the employer remains assured that it will be able to obtain enough qualified and physically sound employees to perform the tasks at hand. [Id. at 450]

Long Branch remains good law. Hudson Cty, P.E.R.C. No. 93-37, 19 NJPER 3 (¶24002 1992); Borough of Little Ferry, P.E.R.C. No. 88-57, 14 NJPER 67 (¶19024 1987); 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). A public employer has a right to deviate from a negotiated allocation system when necessary to protect the public interest. Hudson at 4.

Local 788 asserts that the City has contractually agreed to an allocation system by which firefighters are permitted to choose their overtime assignments and locations. The City asserts that this system has resulted in firefighters selecting positions for which they are not qualified, thus requiring reassignments and temporary company shutdowns. Local 788 responds that battalion chiefs have exercised the authority to reassign unqualified employees; these reassignments have been promptly carried out without seriously disturbing firefighting operations; and firefighters have been cross-trained to operate all equipment.

On this record, the City has established that firefighters have chosen overtime assignments for which they lack skills and qualifications. While cross-training may eventually eliminate this

problem, it has not done so yet. And while battalion chiefs have exercised their authority to make necessary reassignments, these reassignments have occurred after the firefighters have reported to duty at a particular company and have thus resulted in closing down some companies for limited periods of time. This is too high a price to pay for allowing firefighters to choose their overtime assignments and locations.

We hold that the City has a non-negotiable right to determine that certain overtime positions require special skills and qualifications and that only employees with those skills and qualifications may work in those positions. Thus, for example, the City may determine without negotiations that an EMT certification is necessary to work in the Rescue Company. However, after the City has determined that certain positions require special qualifications and skills, it can honor an agreement (assuming one is proven) to ask employees which overtime positions they prefer. The City can then deny requests made by unqualified employees,^{2/} grant requests made by qualified employees, and make any other assignments necessary to ensure that qualified employees are in the proper positions. The City need not wait to act, as it has in the past, until after unqualified employees have reported to duty at a particular company; it may deny a requested assignment at the outset and thus avoid the problem of closing down companies while

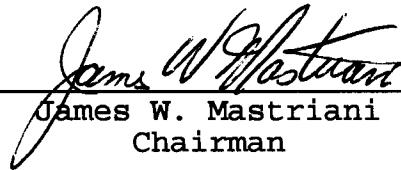
^{2/} The City concedes that Local 788 may arbitrate a claim that an allegedly "qualified" employee has been improperly denied an overtime position (Brief at 8).

reassignments are made. It thus appears that the City's interests in ensuring that qualified employees are assigned to overtime positions can be accommodated with the employees' interests in having some say about the allocation of overtime assignments. We will grant a limited restraint of arbitration in order to protect the City's interest in having qualified employees receive overtime assignments without entirely eliminating the employees' opportunity to prove that they are contractually entitled to request overtime assignments.

ORDER

The request of the City of Camden for a restraint of binding arbitration is granted to the extent the agreement alleged would prohibit the City from determining that overtime positions require special skills and qualifications and from denying those overtime positions to unqualified employees before employees report for duty at a particular company.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. Commissioner Bertolino voted against this decision. Commissioner Smith abstained from consideration.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993