

P.E.R.C. NO. 98-128

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EGG HARBOR CITY,

Petitioner,

-and-

Docket No. SN-97-129

MAINLAND PBA LOCAL #77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Egg Harbor City for a restraint of binding arbitration of a grievance filed by Mainland PBA Local #77. The grievance asserts that the City violated the parties' collective negotiations agreement when it transferred work from full-time police officers within Local 77's negotiations unit to part-time police officers outside Local 77's negotiation unit. The Commission finds that the City's desire to provide coverage at reduced cost does not, as a matter of law, permit the City to abrogate an alleged contractual commitment to use full-time police officers to perform police duties.

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, Robert J. Pinizzotto, attorney

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Steven R. Cohen, of counsel); Schaffer, Plotkin &  
Waldman, consultants (Myron Plotkin, on the brief)

DECISION

On June 18, 1997, the City of Egg Harbor City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Mainland PBA Local #77. The grievance asserts that the City violated the parties' collective negotiations agreement when it transferred work from full-time police officers within Local 77's negotiations unit to part-time police officers outside Local 77's negotiation unit.

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

Local 77 represents the City's full-time police personnel, except the director of public safety and the police

clerk. The parties entered into a collective negotiations agreement effective from January 1, 1996 through December 31, 1998. The grievance procedure ends in binding arbitration of contractual disputes.

Article XVIII is entitled Continuation of Benefits Not Covered by This Agreement. It provides, in part:

Any present or past benefits which are enjoyed by the employees covered by this Agreement that have not been included in this contract shall be continued.

The department is headed by the director of public safety. Before June 1, 1997, the department consisted of thirteen officers including four sergeants. In addition to these regular full-time police officers, the department employed two special officers. The City used these special officers to replace regular police officers on certain shifts rather than call in regular officers on overtime. The PBA filed a grievance asserting that the City had violated the parties' contract by shifting negotiations unit work to the special police officers. On May 13, 1997, the City petitioned the Commission for a restraint of arbitration, a request that we ultimately denied. City of Egg Harbor City, P.E.R.C. No. 98-95, 24 NJPER 114 (¶29057 1998).

On June 1, 1997, the City laid off two full-time police officers and demoted three sergeants to patrol officer positions. Staffing shortages resulted so the City announced its intention to convert the two special officers into part-time officers. The City

asserts that due to a financial crisis, it needed to have the two part-time officers cover shifts at straight time pay rather than have full-time officers do the work on overtime.

On June 13, 1997, the PBA filed a grievance asserting that the transfer of unit work to the two non-unit part-time police officers violated the parties' contract. The grievance was denied and the PBA 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 cannot consider the merits of the grievance or any contractual defenses the City might have.

The scope of negotiations for police and fire employees 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. Compare Paterson PBA No. 1 v. Paterson, 87 N.J. 78 (1981) with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson sets forth these negotiability tests:

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. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] 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]

Because this dispute arises as 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).

The City argues that it has a managerial prerogative to determine appropriate levels of shift coverage. The PBA argues that N.J.S.A. 40A:14-146.8 et seq. precludes the City from using special police officers to replace regular police officers and

that the City has changed the two special officers to part-time officers so it will no longer be governed by any statutory limitations on the use of special officers.

In the Egg Harbor case described above, we held that a claim that the employer had improperly shifted unit work from regular police officers to special police officers was legally arbitrable. See City of Jersey City, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), aff'd 23 NJPER 325 (¶28148 App. Div. 1997), certif. granted 152 N.J. 8 (1997). Here, after the PBA filed the grievance contesting the use of special police officers, the City decided to convert its two special police officers into part-time police officers to ensure shift coverage rather than use full-time police officers on overtime. This desire to provide coverage at reduced cost does not, as a matter of law, permit the City to abrogate an alleged contractual commitment to use full-time police officers to perform police duties. See, e.g., Borough of Belmar, P.E.R.C. No. 89-73, 15 NJPER 73 (¶20029 1988), aff'd NJPER Supp.2d 222 (¶195 App. Div. 1989); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985). Compare N.J.S.A. 40A:14-146.8.

The City's reliance on Borough of Teterboro, P.E.R.C. No. 92-108, 18 NJPER 265 (¶23111 1992), is misplaced. That case involved an Interlocal Services Agreement between a municipality and a county whose terms provided that county police would patrol the municipality at night. The county was not a private employer so the case law on subcontracting did not apply. See Local 195.

The county police were not borough employees so the unit work cases did not apply. The Commission therefore applied the traditional balancing test and concluded that the borough's interests in contracting out certain police coverage outweighed its employees' interest in overtime opportunities.

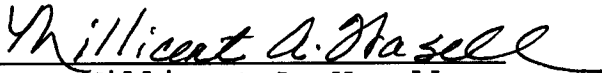
Gloucester Cty., P.E.R.C. No. 92-83, 18 NJPER 99 (¶23045 1992), also cited by the City, supports our holding. In that case, the employer hired a part-time social worker to perform work that had been performed by another part-time employee. We held that the employer had not violated the Act by hiring the part-time social worker, even though all social workers had previously worked full-time, but that the union could grieve its contractual claim that hours of work for social workers had to be maintained. Id. at 100 n. 2. This case raises a similar contractual claim.

We recognize that the employer has also raised a number of defenses to the grievance. It contends that it has used part-time police officers in the past; it cannot afford to use full-time rather than part-time police officers; the management rights clause authorizes it to hire part-time police; and the contract does not contain any right to overtime for full-time police officers. These defenses, however, go to the merits of the grievance and must be presented to the arbitrator. Ridgefield Park. Accordingly, we decline to restrain binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: March 26, 1998  
Trenton, New Jersey  
ISSUED: March 27, 1998