

P.E.R.C. NO. 82-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PITMAN,

Petitioner,

-and-

Docket No. SN-82-8

POLICEMAN'S BENEVOLENT
ASSOCIATION, LOCAL #178,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission grants the request of the Borough of Pitman for a permanent restraint of arbitration of a grievance filed by the Policeman's Benevolent Association, Local No. 178. The grievance concerned the Borough's decision to assign a police officer, who was scheduled to work a day shift, to an afternoon shift to cover for a sergeant who was unable to work due to an illness. The Commission, however, denied the Borough's request for a permanent restraint of arbitration concerning the question of additional compensation due the police officer for allegedly performing the work of the sergeant. The Commission refused to rule upon an emergency proviso in the parties' collective bargaining agreement since such provision was not a matter in dispute.

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Appearances:

For the Petitioner, Archer, Greiner & Read, P.C.
(Steven W. Suflas and Nona L. Ostrove, of Counsel)

For the Respondent, Selikoff & Cohen, P.A.
(Joel S. Selikoff, of Counsel)

DECISION AND ORDER

On August 6, 1981, the Borough of Pitman (the "Borough") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Borough and the Policeman's Benevolent Association, Local #178 (the "Association") are within the scope of collective negotiations.^{1/} The instant dispute arose with respect to certain grievances which the Association seeks to submit to arbitration. The Borough has objected to arbitration on the basis that the issues in dispute are neither negotiable nor arbitrable.

1/ While the majority representative of police officers in the Borough of Pitman is the Fraternal Order of Police, Lodge No. 51, Officer Priggemeier is also a member of PBA Local #178. The FOP and the Borough both agree that for purposes of the dispute herein that the PBA will represent Officer Priggemeier.

The relevant contractual provision under Article VIII, Section 1-B of the current collective bargaining agreement between the Borough and the FOP is as follows:

An officer shall work in accordance with a schedule to be posted on a monthly basis by the Chief of Police. The current work schedule worked by an officer is as follows:

Five days on duty - three days off
Five days on duty - three days off
Five days on duty - four days off

(1) The above work schedule is commonly referred to by the parties to this Agreement as the "Five Platoon System." The Five Platoon system requires an officer to work no more than 120 hours in a 25 day unit system, throughout the calendar year, but without regard to calendar weeks.

The parties agree that during the work period of October 17 - 21, 1980, the grievant, Patrolman Stephen Priggemeier was scheduled to work five consecutive day shifts. However, the Borough changed Priggemeier's schedule on October 19, 20, and 21 to the 3:30 to 11:30 p.m. shift in order to cover for a sergeant who was unable to work because of an illness.^{2/} Priggemeier did report to work on the 3:30 - 11:30 p.m. shifts on the days noted above. Priggemeier grieved the change in his work schedule and, in addition, claims he is entitled to pay over and above his normal patrolman's salary for having allegedly performed the duties of a sergeant on the days he worked the 3:30 - 11:30 p.m. shift.

^{2/} The Petition of the Borough and the copy of the Association's "Official Grievance" No. 2 only make reference to Priggemeier having worked the 3:30 - 11:30 p.m. shift on the dates noted above. However, the Association's brief notes that Priggemeier also worked the 3:30 - 11:30 p.m. shift for three days in September, 1980. We make no judgment on the number of days Priggemeier worked the 3:30 - 11:30 p.m. shift except to note the discrepancies in the documents filed herein.

We agree with the Borough that its right to assign Patrolman Priggemeier is not susceptible to grievance arbitration. While we agree that the assignment was a prerogative of the Borough under the aforementioned facts, we do not agree with its assertion that the basis for this determination relates to the subject of work schedules. We have previously found work schedules to constitute a mandatory subject for negotiation. However, we have also held that work schedules are mandatorily negotiable only within the confines of the manpower requirements of the public employer,^{3/} particularly temporary emergent situations.

The decision of the Borough to assign Patrolman Priggemeier to the 3:30-11:30 p.m. shift related to its need to temporarily fill the department's manpower needs in the absence of an ill sergeant who was regularly scheduled to work on the 3:30-11:30 p.m. shift.^{4/} In this instance the grievance herein is non-arbitrable because we find the dominant issue in dispute to relate to the Borough's need to temporarily assign personnel to

^{3/} In re Borough of Montvale, P.E.R.C. No. 81-55, 6 NJPER 542 (¶11275 1981). Also see, In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977); In re Township of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977); In re City of Northfield, P.E.R.C. No. 78-81, 4 NJPER 247 (¶4125 1978); In re Town of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4135 1978); In re Twp. of Clark, P.E.R.C. No. 79-50, 5 NJPER 90 (¶10049 1979); In re Twp. of Mount Holly, P.E.R.C. No. 79-51, 5 NJPER 91 (¶10050 1979); In re City of Perth Amboy, P.E.R.C. No. 79-86, 5 NJPER 205 (¶10117 1979); In re Borough of Edgewater, P.E.R.C. No. 80-15, 5 NJPER 368 (¶10188 1979); In re City of Cape May, P.E.R.C. No. 80-35, 5 NJPER 403 (¶10210 1979); In re Borough of Edgewater, P.E.R.C. No. 80-62, 6 NJPER 197 (¶11096 1980).

^{4/} The Commission notes that the Petition for Scope of Negotiations Determination indicates that there are only 11 police officers on the Borough's police force.

meet its emergent manpower requirements, Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980), and to permit arbitration on this issue would constitute a substantial limitation on the exercise of inherent or express management prerogatives. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). See also, In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12, 24-25 (App. Div. 1977).

We do not, however, reach the same conclusion with respect to the question as it relates to the Association's claim that Patrolman Priggemeier is entitled to additional compensation for performing the temporary duties of the sergeant. While not passing upon the merits of the grievance, the issue concerning premium pay for temporary work assignments in a higher category is a mandatory subject of negotiations^{5/} and may proceed to grievance arbitration.

The Borough also maintains that the entire provision in Article VIII regarding emergency declarations and scheduling during emergencies is an illegal subject of negotiation. The Association, on the other hand, argues that the grievance herein does not concern itself with the emergency provision and that the provision is not properly before the Commission.

Pursuant to N.J.S.A. 34:13A-5.4(d), the Commission has "...the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations." (Emphasis supplied). Additionally, N.J.A.C. 19:13-2.2(a) requires

^{5/} In re Franklin Lakes Borough, P.E.R.C. No. 78-36, 4 NJPER 30 (¶4016 1977), cf. In re Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10104 1979).

that a scope of negotiations petition must contain a statement that the dispute has arisen:

- i. During the course of collective negotiations and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for collective negotiations; or
- ii. With respect to the negotiability of a matter or matters sought to be processed pursuant to a collectively negotiated grievance procedure; or
- iii. Other than in subparagraphs i and ii above, with an explanation of the circumstances.

The Borough in its Statement of Dispute in the Petition herein, states in part:

It is further the position of the Borough that the proviso of Article VIII regarding declaration of an emergency and scheduling as a result thereof is contrary to N.J.S.A. 40A:14-133 and hence, an illegal subject of bargaining.

In In re Camden County, P.E.R.C. No. 81-56, 6 NJPER 544 (¶11276 1981), the Commission once again, as it did in In re Cinnaminson Twp. Bd. of Ed., P.E.R.C. No. 78-11, 3 NJPER 323 (1977), considered the issue of matters not in dispute. As we noted in Camden, supra:

Our analysis in Cinnaminson began with the observation that the Commission's statutory authority does not extend to the issuance of advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to a potential, controversy. Ordinarily, an actual dispute exists because one party has insisted upon negotiating or arbitrating a given subject matter and the other party has resisted such negotiation or arbitration.

While the Borough claims the emergency provision is an illegal subject of negotiation, the Borough has not alleged, and the Association has not conceded, that there is a present dispute

over arbitration of the emergency provision clause. Additionally, the Commission in both Camden County and Cinnaminson "recognized, consistent with N.J.A.C. 19:13-2.2(iii) that 'special circumstances' might present a matter in dispute outside of the negotiation or arbitration related posture." Camden County, supra. However, the Borough again has not presented the Commission with any indication that special circumstances exist.

We, therefore, find that the validity of the entire emergency proviso is not an appropriate issue before the Commission under N.J.S.A. 34:13A-5.4(d), in this case.

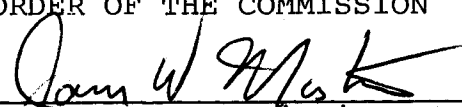
ORDER

Based upon the above discussion, IT IS HEREBY ORDERED that:

A. The Borough of Pitman's request for a permanent restraint of arbitration concerning the question of the Borough's assignment of Officer Priggemeier to the 3:30-11:30 p.m. shift is granted.

B. The Borough of Pitman's request for a permanent restraint of arbitration with respect to the issue of additional compensation due Officer Priggemeier for allegedly performing the work of a sergeant is hereby denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, Newbaker and Suskin voted for Part A of the Order. Commissioner Hipp voted against Part A of the Order.

Chairman Mastriani, Commissioners Hartnett, Parcels, Newbaker, Suskin and Hipp voted for Part B of the Order. Commissioner Graves was not present.

DATED: November 10, 1981
Trenton, New Jersey
ISSUED: November 12, 1981