

P.E.R.C. NO. 86-150

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-86-34

FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines a request by the City of Newark to restrain binding arbitration of a grievance which the Fraternal Order of Police, Newark Lodge No. 12, filed. The grievance seeks overtime compensation for three police officers who were required to act as decoy prostitutes one night each. The Commission holds that the grievance may be submitted to binding arbitration because overtime compensation is mandatorily negotiable.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-86-34

FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,

Respondent.

Appearances:

For the Petitioner, Rosalind Lubetsky Bressler, Corporation Counsel (Joanne Y. Johnson, Assistant Corporation Counsel)

For the Respondent, Markowitz & Richman, Esqs.
(Stephen C. Richman, of Counsel)

DECISION AND ORDER

On December 2, 1985, the City of Newark ("City") filed a Petition for Scope of Negotiations Determination. The City seeks to restrain binding arbitration of a grievance that the Fraternal Order of Police, Newark Lodge No. 12 ("FOP") has filed. The grievance seeks overtime compensation for three police officers who were required to act as decoy prostitutes one night each.

The parties have filed briefs. The following facts appear.

The FOP is the majority representative of the City's 900 rank-and-file police officers. The City and the FOP have entered a collective negotiations agreement effective from January 1, 1985 through December 31, 1986. Article 5 pertains to overtime. Section

3 provides that if an employee is required to work on his or her "time off," then overtime is to be paid at 1 1/2 times the regular rate of pay. Section 4 provides that an investigator or detective ordered to work overtime other than when completing routine assignments shall be paid 1 1/2 times the regular rate of pay. Section 6 defines overtime as "whenever an employee is required to give up free time." The grievance procedure ends in binding arbitration.

Detectives Joanne Polk and Benetta Johnson ordinarily work from 9:00 a.m. to 5:00 p.m.. Police officer Noreen Britt Headon ordinarily works from 4:00 p.m. to 12:00 p.m.

On July 10, 1985, Polk worked from 6:00 p.m. to 2:00 a.m. as a decoy prostitute. The next night, Johnson performed that assignment and the night after that, Headon did. There were approximately ten female officers eligible for this assignment. According to the City each one volunteered; the FOP disputes this assertion.

The FOP then filed a grievance seeking overtime compensation for each employee under Article 5. The City denied this grievance; the FOP demanded binding arbitration; and this petition ensued.

The City asserts it has a managerial prerogative to make temporary changes in shift assignments and that the voluntary nature of these assignments eliminates any obligation to negotiate over or pay overtime compensation.

The FOP responds that overtime compensation is a mandatorily negotiable term and condition of work and that the City's ability to change shifts temporarily is not in issue.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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 decide the contractual merits of the FOP's grievance or any defenses the City may have.

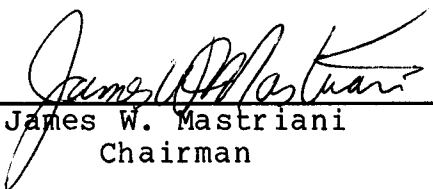
The FOP has conceded that the City had a right to change the officers' shift assignments temporarily. The only question is whether the City could legally agree that it would pay these employees overtime compensation for working during what would normally be time-off. The answer is yes: overtime compensation has repeatedly been held to be mandatorily negotiable. See State Troopers, P.E.R.C. No. 86-139, ___ NJPER ___ (¶ ___ 1986); City of Newark, P.E.R.C. No. 86-52, 11 NJPER 704 (¶16242 1985); City of Long

Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); Borough of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981). Whether these employees volunteered for the nighttime assignment is not relevant to the abstract question of negotiability, although it may be relevant to the contractual question of whether the employees are entitled to overtime compensation. Accordingly, we decline to restrain binding arbitration.

ORDER

The City's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Horan was not present.

DATED: Trenton, New Jersey
June 25, 1986
ISSUED: June 26, 1986