

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BOUND BROOK,

Petitioner,

-and-

Docket No. SN-79-53

TWIN BROOK P.B.A. LOCAL 148,

Respondent.

SYNOPSIS

The Commission in a scope of negotiations proceeding determines that the following are required subjects of collective negotiations: overtime pay at the rate of time and one half of a police officer's regular rate of pay, minimum overtime provisions, compensation for work performed by police officers during off-duty hours, and overtime preference procedures. The Borough of Bound Brook was ordered, upon the demand of the PBA, to negotiate in good faith with the PBA concerning the above issues. These proposals may be submitted to compulsory interest arbitration in accordance with the procedures and requirements of N.J.S.A. 34:13A-14 et seq. (Laws of 1977, Chapter 85) and N.J.A.C. 19:16-1.1 et seq.

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Appearances:

For the Petitioner, Mr. Thomas C. Galeta

For the Respondent, Sergeant Dan Vickey

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Borough of Bound Brook ("Borough") with the Public Employment Relations Commission on January 8, 1979 disputing the negotiability of matters which the Twin Brook P.B.A. Local 148 ("PBA") was seeking to negotiate.

The parties are presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The Borough filed its brief in this matter on January 11, 1979. The PBA filed its brief on February 5, 1979.

The issues placed before the Commission for determination in the instant proceeding are the negotiability of the following proposals:

1. OVERTIME: Compensation for overtime shall be paid in cash at the rate of time and one-half the officer's regular rate of pay. Overtime shall be defined as authorized work performed in excess

of the regular work day or work week. Officer may elect to take compensatory leave time at the rate of time and a half in lieu of overtime cash payments.

**MINIMUM OVERTIME:** Whenever an Officer is called to perform overtime duty when he is already off duty, he shall be paid for a minimum of two hours.

2. **TRAINING:** Officers ordered to attend training sessions, schools, seminars, or other assigned functions, shall attend such training sessions, schools, seminars or other assigned functions at Borough's expense. Officers ordered to attend such training shall do so on Borough's time, or be compensated for such time spent on straight compensatory time rate. Voluntary training shall be excluded from provisions of this paragraph.

3. **PREFERENCE GIVEN FOR OVERTIME DUTY ASSIGNMENTS:** A regular police officer shall be given preference for overtime duty before assigning a special officer.

The first issue in dispute concerns the PBA's demand that compensation for overtime be paid at a time and one half rate or by granting compensatory time off at that rate at the option of the individual police officer. This overtime proposal also provides that an off-duty police officer be paid for a minimum of two hours duty when called to perform overtime work. The Borough does not advance any argument relating to the minimum overtime subsection, but asserts that N.J.S.A. 40A:14-134 and 40A:14-135 mandates that a public employer such as the Borough reserves the right in individual overtime cases to either compensate a police officer at his prevailing rate, at time and one half, or by giving compensatory time off at the Borough's option.<sup>1/</sup> The

<sup>1/</sup> The Borough incorrectly cites these provisions as N.J.S.A. 40A:14-133 and 40A:14-134.

Borough concludes that the above-cited statutes would be contravened if it acceded to the PBA's demands. The PBA disputes the Borough's contentions and asserts that the cited statutes merely authorize negotiations concerning particular forms of compensation for overtime work performed and do not prohibit such negotiations.

After careful consideration of the parties' submissions, we conclude that the particular overtime compensation proposals at issue are required subjects for collective negotiations. It is essentially uncontroverted by the parties that in the abstract, assuming that no legislation existed concerning the subject of overtime compensation, overtime pay is a required subject for collective negotiations, clearly relating to economic terms and conditions of employment. We concur.<sup>2/</sup> The Borough, however, argues that specific legislation, i.e. N.J.S.A. 40A:14-134 and 40A:14-135,<sup>3/</sup> when read together proscribe negotiations on the

2/ See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Educational Secretaries, 78 N.J. 1 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978); Bd. of Ed. of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973), Byram Bd. of Education and Byram Tp Education Ass'n, P.E.R.C. No. 76-27, 2 NJPER 143 (1976) affmd 152 N.J. Super. 21 (App. Div. 1977) and In re Borough of Sayreville, P.E.R.C. No. 79-5 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1979) decided this day.

3/ N.J.S.A. 40A:14-134 reads as follows: "'Emergency' as used herein shall include any unusual conditions caused by any circumstances or situation including shortages in the personnel of the police department or force caused by vacancies, sickness or injury, or by taking of accrued vacation or sick leave or both, whereby the safety of the public is endangered or imperiled, as shall be determined within the sole discretion of the officer, board or official having charge of the police department or force in any municipality.

In any municipality in which the officer, board or official having charge or control of the police department or force has authority, in times of any such emergency to summon and keep on duty any paid members of the police department or force for

(Continued)

topic of overtime. We do not agree.

The New Jersey Supreme Court in State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978) determined that although statutes (and regulations where appropriate) which set specific limitations, i.e. those that spoke in the imperative and established particular terms and conditions of employment, could be claimed to limit an employer's authority to negotiate terms and conditions of employment, general statutes giving broad grants of authority to employers are not a shield to nor a limitation on the duty to negotiate. Consistent with this decision, the Commission finds that the statutes cited by the Borough do not make it illegal for the Borough to negotiate over the overtime proposals proffered by the PBA. These enactments are statutes that grant broad authority

3/ (continued) a period or periods of time in excess of the hours of ordinary duty, the governing body may provide compensation for some or all of such emergency duty by any such policeman at his prevailing wage, or at a rate not in excess of 1 1/2 times his prevailing hourly wage rate, which compensation shall be in lieu of any compensatory time off otherwise due for the emergency duty so compensated.

The governing body of the municipality may, if necessary, make emergency appropriations to provide funds for the payment of such compensation as provided by law."

N.J.S.A. 40A:14-135 reads as follows: "The governing body of any municipality may, by ordinance, provide that whenever any member of the police department or force shall be required to appear before any grand jury or at any municipal, County, Superior or Supreme Court proceeding, except in a civil action, the time during which he is so engaged shall be considered a time of assignment to, and performance of duty. When such appearance occurs during the member's assigned duty hours, he shall suffer no loss in compensation. When such appearance occurs outside his assigned duty hours, he shall receive either compensatory time off from his regular duty hours or additional compensation."

to a public employer to provide for particular forms of overtime payments subject to the requirement contained within N.J.S.A. 34:13A-5.3 to negotiate over this term and condition of employment upon demand of the majority representative of particular employees.<sup>4/</sup> These statutory provisions have only a limited preemptive effect on collective negotiations that is of no relevance to the instant proceeding given the specific contract proposals, i.e. a public employer may not agree to pay overtime in excess of one and a half times an employee's prevailing rate in light of language within the second paragraph of N.J.S.A. 40A:14-134.

The second item in dispute involves a demand for some form of compensation for work performed by police officers during off-duty hours. The PBA requests such compensation for in-service training sessions and required attendance at school or seminars. The Borough treats this proposal as one that compromises the Borough's right to determine what training is required of a police officer. The PBA asserts that it is in no way seeking to restrict the Borough's right to determine what training is required of police officers and is seeking negotiations on the sole issue of compensating police officers for attendance at training sessions that are attended outside normal work hours.

We find that the issue of compensation for attendance at training sessions and seminars outside a police officer's normal hours is a required subject for collective negotiations as

<sup>4/</sup> See In re Franklin Lakes P.B.A. Local #150, P.E.R.C. No. 78-36, 4 NJPER 30 (¶4016 1977) and In re Township of Saddle Brook P.E.R.C. No. 78-72, 4 NJPER 192 (¶4097 1978).

it relates to payment for increased workload which is clearly a mandatory topic for negotiations. This finding is consistent with a prior Commission decision relating to this particular issue.<sup>5/</sup> No statute has been cited by the Borough that would deprive it of the authority to negotiate concerning this particular topic.

The final item in dispute is a proposal that regular police officers be given preference for overtime duty before assigning a special police officer. The Borough asserts that this matter of preference relates to a managerial prerogative and the inherent right of management to assign and deploy its personnel. The PBA refers to an Attorney General's Formal Opinion (Number 22-1977) which it says concludes that special police officers should not be equated generally with regular permanent members of a municipal police department because of differences in training and job skills for purposes of assigning overtime or otherwise.

The Commission in In re Township of Maplewood, P.E.R.C. No. 78-89, 4 NJPER 258 (¶4132 1978) decided the negotiability of similar "priority for overtime assignment" issue, i.e. a demand that probationary fire fighters not be considered for overtime assignments for the first 90 days of their employment. The Commission stated the following in that decision:

With respect to the use of probationary employees to work overtime, we agree that this is a required subject of negotiations. Overtime,

<sup>5/</sup> See In re Saddle Brook, supra.

the distribution or allocation of overtime among employees and the procedures for selecting employees for overtime are all terms and conditions of employment. The obvious effect of the Local's proposal would be to require that overtime assignments be limited to non-probationary employees, thereby increasing the amount of overtime available to them. Whether the Town will agree with the Local's proposal and the rationale that it advances to support it -- better fire protection for the Town and safety for the employees -- is quite another question but that is not to say that this is not a required subject of negotiations.

4 NJPER 258 at 259.

The Commission in this instant matter again concludes that the issue of overtime preference is properly viewed as a compensation issue and not as an assignment issue and finds that in such circumstances this proposal is a required subject for collective negotiations.<sup>6/</sup>

Before concluding the Commission deems it appropriate, in light of the tenor of the Borough's arguments in this case, to emphasize that although we have determined that the proposals at issue are all mandatory subjects for collective negotiations, the obligation to negotiate is not tantamount to an obligation to agree to the particular proposal advanced in negotiations.<sup>7/</sup> The Borough in its brief fails to distinguish between the wisdom of agreeing to a particular proposal relating to a term and condition of employment and whether that proposal relates to a term and condition of employment. The fact that it would not be

<sup>6/</sup> An additional issue -- that of contracting out unit work -- is raised if special police officers employed by the Borough are not included in the unit represented by the PBA. The Commission in the past has determined that the contracting out of unit work is a required subject for collective negotiations. See e.g. In re Piscataway Board of Education, P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124 1978) and In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977).

<sup>7/</sup> See Byram Twp. Board of Education v. Byram Education Ass'n, 152 N.J. Super. 12 (App. Div. 1977).

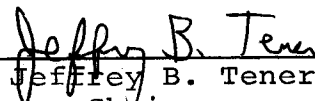


reasonable or prudent to accept a proposal does not by itself render the proposal something other than a term and condition of employment and therefore non-negotiable. The task confronting the Commission is to decide whether the disputed matters are terms and conditions of employment, not whether the Borough should accede to the Borough's proposal.

ORDER

With respect to the above-cited proposals that we have determined to relate to required subjects of collective negotiations, the Borough of Bound Brook is ordered, upon demand of PBA Local #148, to negotiate in good faith with PBA Local #148. These proposals may be submitted to compulsory interest arbitration in accordance with the procedures and requirements of N.J.S.A. 34:13A-14 et seq. (Laws of 1977, Chapter 85) and N.J.A.C. 19:16-1.1 et seq.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
March 8, 1979  
ISSUED: March 9, 1979