TOWN OF WEST BRIDGEWATER AND WEST BRIDGEWATER POLICE ASSOCIATION, MUP-4470 (7/7/83). DECISION ON APPEAL OF HEARING OFFICER'S DECISION.

54.23 overtime
54.234 court time
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67.8 unilateral change by employer
92.51 appeals to full commission

Commissioners participating:

Paul T. Edgar, Chairman
Joan G. Dolan, Commissioner
Gary D. Altman, Commissioner

Appearances:

John P. Lee, Esq. - Representing the Town of West Bridgewater

Lawrence M. Siskind, Esq. - Representing the West Bridgewater Police Association

DECISION ON APPEAL OF HEARING OFFICER'S DECISION

Statement of the Case

On November 18, 1981, Hearing Officer Robert J. Ambrogi issued a decision finding that the Town of West Bridgewater (Town) had violated Sections 10(a)(5) and (1) of the Law by unilaterally changing its court appearance practice without bargaining to impasse or resolution over the impact of that decision on the overtime opportunities of members of the bargaining unit represented by the West Bridgewater Police Association[1] (Association). On November 25, 1981, the Town filed a timely notice of appeal pursuant to Commission Rule 402 CMR 13.13(2).

On January 25, 1982, the Town filed a request to admit additional evidence, which was allowed, and a supplementary statement seeking reversal of the hearing officer's decision. The Union did not submit a supplementary statement.

On April 15, 1982, the Commission contacted the parties and solicited further statements in light of its decision in Town of Billerica, 8 MLC 1957 (issued March 19, 1982).[2] On May 7, 1982, and May 10, respectively, the Union and Town responded

[1]The full text of the decision appears at 8 MLC 1601 (H.O., 1981).

[2]Specifically, the Commission asked the parties to respond to the following issues:

1. Whether the employer is obligated to bargain to impasse or resolution over the decision to alter the assignment of court appearance functions within the unit represented by the union;

(continued)

to the Commission's request for additional statements. The Town submitted a memorandum urging dismissal under the principles stated in the Billerica decision. Counsel for the Association did not file a memorandum, but stated in a letter to the Commission that the Association was resting on the merits of the hearing officer's decision.

Based on the record and for the reasons set forth below, we reverse the hearing officer and hold that the Town did not violate Sections 10(a)(5) and (1) of the Law by assigning arraignment appearances formerly performed by arresting officers to a single member of the bargaining unit.

Findings of Fact

The facts as found by the hearing officer are largely undisputed. To the extent they are disputed, however, we have reviewed the record below and hereby adopt the hearing officer's findings of fact, except where noted. We summarize those facts as follows:

For fifteen years prior to July 1, 1981,[3] it had been the practice in the police department of the Town of West Bridgewater for arresting officers to appear in court at arraignments in order to sign complaints against criminal defendants. An arresting officer who made such an appearance while on night duty or while off duty would receive a minimum of three hours' pay at an overtime rate for each court appearance pursuant to the "Court Time" pay provisions of the collective bargaining agreement. The contract, however, contained no guarantee that arresting officers would continue to make court appearances while off duty, nor did it promise that employees would receive any minimum amount of overtime work.[4]

In January 1981, Chief Lothrop issued the following general order consolidating the business of signing complaints and appearing at arraignments by assigning this work to the department's police prosecutor:

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2 (continued)

2. If the decision to change the assignment of court appearance functions is not mandatorily bargainable, is the public employer required to bargain over overtime lost because of the change?

[3]All dates refer to calendar year 1981, unless otherwise noted.

[4]Article VII of the 1979-1981 contract provided:

An employee on duty at night or on vacation, furlough or a day off, who attends as a witness for the Commonwealth in a criminal case pending in a District Court, including the Municipal Court of the City of Boston, or any Juvenile Court or any Superior Court, may, in lieu of the witness fee to which he would otherwise be entitled, be granted not less than three (3) hours of additional pay at the rate of one and one-half (1-1/2) times his regular hourly rate of pay.

December 30, 1980

GENERAL ORDER # 15-8-81

TO: All Personnel
FROM: Chief of Police
SUBJECT: Signing Criminal Complaints

Effective January 1, 1981 all Criminal Complaints shall be signed by the Court Prosecutor Sgt. Charles D. Anderson.

This shall include applications for complaints and arrests.

s/ Ervin G. Lothrop

The President of the Association, Raymond Rogers, protested that the Town was implementing this practice without bargaining and indicated that the Union might take some sort of legal action. Accordingly, on January 19, Chief Lothrop rescinded General Order No. 15-8-81.

On April 30, the parties commenced negotiations for a collective bargaining agreement to succeed one that was due to expire on June 30. The discussions on April 30 focused on proposals the Union had submitted to the Town on or about January 21. The Town did not raise the issue of the court appearance practice at the April 30 meeting.

At a second meeting on June 4, Chief Lothrop and John Lee, acting as the Town's bargaining team, submitted the Town's proposals to the Association. In addition, Chief Lothrop gave the Association's bargaining team the following document captioned "DEPARTMENTAL ORDER NO. 20--80--81":

DATE: June 4, 1981
TO: All Sergeants and Officers
FROM: The Office of the Chief of Police
SUBJECT: Signing of Criminal Complaints

Effective July 1, 1981, the officer assigned to prosecute cases for this Department in the Brockton District Court will sign all Criminal Complaints in such Court. The arresting officer will not be required to be present in Court either for the signing of a Complaint or for an arraignment.

Attorney Lee explained that the reason for the change was the Town's need to save money. The Association's bargaining team reacted to this information by stating that the implementation of this order would substantially reduce overtime pay. Moreover, Lawrence Siskind, counsel for the Association, protested that the order was probably "illegal." The meeting broke up after less than an hour of discussion.

On June 23, at the next regularly-scheduled negotiation session, Siskind stated that the Association rejected Departmental Order No. 20-80-81 as illegal and contrary to past practice. He stated that he did not want to discuss the matter further, but wanted to move on to other negotiation issues. Counsel for the Town

asked if the Association was unwilling to discuss the matter further. Siskind replied that the Association was willing to continue discussions. Again, after less than an hour of negotiations, the meeting ended.

On June 24, the Association's counsel sent Lee a letter recounting the Association's version of the June 23 negotiations, restating the Association's opposition to any change in court appearance practice, and asking for further negotiations on the subject. On July 6, Lee responded on behalf of the Town stating that he considered the parties to be at impasse and that, due to fiscal constraints, the Town had proceeded to implement the order on July 1.

Beginning on July 1, all arraignments were assigned to a sergeant designated by Chief Lothrop to appear in Court during his regular shift,[5] and arresting officers have not appeared at court arraignments since that time. Because of this practice, overtime opportunities for officers in the bargaining unit have been reduced.

Opinion

In the decision below, the hearing officer determined that the Town committed a prohibited practice by unilaterally eliminating the long-established practice of permitting arresting officers to appear at arraignments. Without considering whether the Town was required to bargain over the underlying management decision, he concluded that it was obligated to bargain over the impact of the change on overtime earnings. Accordingly, we begin our review of the hearing officer's decision by examining the extent of the Town's obligation to bargain over the change in its court appearance practice.

It is well-settled that a public employer violates Sections 10(a)(5) and (1) of the Law when it unilaterally alters a term or condition of employment involving a mandatory subject of bargaining without providing the exclusive representative of its employees an opportunity to negotiate over the change. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); See, also, NLRB v. Katz, 369 U.S. 736 (1962). We have consistently recognized, however, that the duty to bargain is limited to those decisions that, on balance, have a significant impact on employees. "Management decisions which do not have a direct impact on terms and conditions of employment . . ." or are fundamental to the direction and scope of the governmental enterprise need not be committed to the collective bargaining process. Town of Danvers, 3 MLC 1559 (1977); see also, Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964).

Although certain decisions fall within the managerial prerogative of public employers, the impact of such decisions may affect certain terms and conditions of employment. Thus, we have held that public employers may be required to bargain over the "impacts" of their managerial decisions on working conditions, even though they need not bargain over the decisions themselves. See, e.g., Newton School

[5]The Town has consistently recognized the Association as the exclusive bargaining representative for "all regular, permanent intermittent, and reserve police officers of the Police Department of the Town, up to and including sergeants."

Committee, 5 MLC 1016 (1982), aff'd sub nom. School Committee of Newton v. Labor Relations Commission, 388 Mass. 557 (1983); Cambridge School Committee, 7 MLC 1026 (1980); Town of Billerica, 8 MLC 1961 (1982).

With these general principles in mind, we must first consider whether the Town was required to bargain over the underlying decision to assign all arraignment work to one member of the bargaining unit, rather than having it performed by each arresting officer. We conclude that the Town had no obligation to bargain over that decision.

The decision to limit the number of bargaining unit members who appear at arraignments is the type of "core governmental decision" we have held to be beyond the scope of mandatory bargaining. In Town of Danvers, supra, for example, we observed that decisions concerning the number of employees to be hired to deliver a given service are decisions committed to the public employer. Decisions to reduce the size of the work force and to abolish existing positions also fall exclusively within the purview of managerial discretion. See, e.g., Newton School Committee, supra; Lawrence School Committee, 3 MLC 1304 (1976). It follows that if a public employer can unilaterally decide not to have work done, to hire additional personnel to perform existing work or to reduce the size of its work force, it may also determine the number of employees it will assign to perform a particular function without being required to bargain over that decision.

The decision to change the arraignment practice in the instant case is similar to the assignment change we found to be within the managerial prerogative in Town of Arlington, 4 MLC 1296 (1977). In Arlington, the employer unilaterally changed the practice of temporarily assigning the chief officer's aide to fire suppression duty during the last two hours of a shift, and began assigning the aide for an entire shift. Recognizing that the decision was designed to insure minimum shift coverage, we held that the decision to change the aide's assignment did not require bargaining. Similarly, we conclude that the decision in the present matter to assign all arraignment work to one officer was within the Town's managerial prerogative to deploy its personnel in the most efficient manner and, therefore, did not trigger a bargaining obligation.[6]

The second issue we must address is whether the Town was required to bargain over the "impact" that its decision to reassign arraignments had on overtime opportunities.[7] This is not the first time we have considered the issue. In City of

[6]The decision to change the arraignment practice in the instant case is distinguishable from the change in the assignment of employees to perform arraignment work that existed in Town of Burlington, MUP-3517 (August, 1980). In the instant case, the work is still being performed by a member of the bargaining unit. In Burlington, however, the employer transferred the arraignment work outside the bargaining unit. Because the employer's decision resulted in a loss of bargaining unit work, it was a mandatory subject of bargaining.

[7]The only "impact" of the reassignment reflected on the record before us is the reduction in overtime opportunities. Thus, we need not consider whether other impacts of the reassignment, if any, would require bargaining.

Everett, 7 MLC 1012 (1980) and City of Lowell, 6 MLC 1173 (1979), we observed that the impact of similar reassignments on overtime earnings required bargaining.[8] Since those decisions were issued, however, we have determined that not every loss of overtime opportunities creates a bargaining obligation. Town of Billerica, 8 MLC 1957 (1982); Town of Dracut, 9 MLC 1702, 1705 (1983). See, also, City of Hartford and Local 760, IAFF, AFL-CIO, Connecticut State Board of Labor Relations, Case No. MPP-5145, Decision No. 1850, January 16, 1980. Accordingly, we must re-examine our decisions in Everett, supra and Lowell, supra in light of subsequent cases involving losses of overtime opportunities.

There are legitimate management decisions which cause, as their necessary result, the elimination or reduction of overtime opportunities. These decisions may be legitimate changes in duty assignments within a bargaining unit which, because of location (for example, reassignment between police districts) or shift changes (for example, reassignment from a day shift to a night shift), alter an individual employee's access to overtime opportunities. In Town of Billerica, supra, it was the employer's legitimate reduction in staffing levels per shift that had the result of reducing the number of available overtime opportunities. Neither every such management decision nor the impact of every such decision on the availability of overtime opportunities is a mandatory subject of bargaining. Normally, the management decision to reassign work, to leave work uncompleted, or to have work completed on an overtime basis is fundamental to the direction and scope of the governmental enterprise under a Danvers analysis. "The very nature of (overtime) carries its own warning that it is an ad hoc solution that may not last." City of Hartford, supra.

We have said, however, that under certain circumstances overtime can lose its normally conditional status and become, through the understanding of the parties, a guaranteed wage item which cannot be unilaterally eliminated by the employer. We have, under our previous cases, drawn this line between "unscheduled" and "scheduled" overtime. Hence, in Town of Billerica, supra at 1962, we stated that:

> The loss of available overtime is inevitable whenever a municipal employer reduces the minimum number of personnel assigned to a shift. The former inextricably follows from the latter, and the latter, as emphasized above, is a matter over which the employer may legally exercise its discretion free of any obligation to bargain with the employees' representatives...Neither the provisions of the collective bargaining agreement nor the past practice of the Department guaranteed a particular amount of overtime to fire fighters. No overtime has been regularly scheduled. Instead, overtime was assigned on an ad hoc basis. Fire fighters may in the past have been able to anticipate that overtime hours would be made available to them during a particular week or month, but this expectation has always been and continues to be contingent upon the retention by management of previously established minimum manning levels.

[8] See, also, Town of Shrewsbury, 6 MLC 1733 (H.O. 1980); City of Medford, 8 MLC 1401 (H.O. 1981).

> By issuing two orders, one of which abolished the practice of filling "odd hours" and the other of which altered minimum manning levels in the Department, the Town has unquestionably reduced the number of overtime hours available to fire fighters represented by the Association, but it has not changed the terms and conditions of employment of these fire fighters within the scope of Section 10(a)(5) of the Law. Fire fighters have never enjoyed any guarantee that a certain amount of overtime would be made available, nor have they received assurances that the overtime needs of the Town would remain unchanged. On such a fact pattern, the overtime at issue here can be characterized as unscheduled overtime, the continued existence of which is not a condition of employment within the meaning of the Law.

This must be compared to our decision in City of Peabody, 9 MLC 1447 (1982), wherein we stated that the regular payment of extra compensation to police officers who simply worked a regularly scheduled day shift, albeit termed as "overtime," was a guaranteed wage item and hence a mandatory subject of bargaining. We stated, supra at 1450, that:

> Assuming, however, that the practice here can be characterized as overtime, the outcome would still be the same. In Billerica, the rationale for holding that overtime opportunities were a permissive subject of bargaining was that the employees in that case had no assurance that a certain amount of overtime would be made available to them. The overtime was unscheduled. Therefore, we concluded in that case that the decision to assign overtime was a decision within the discretion of the employer and therefore permissive.
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> This case is the opposite of the situation in Billerica. Here, the prior practice has been that police officers working during the day shift were automatically compensated for thirty minutes for every day worked or three hours for working three days in a given week. Unlike Billerica, under the practice in this case, the Employer exercised no discretion with regard to staffing needs. Under the circumstances, the overtime here is scheduled overtime, the continued existence of which is a condition of employment within the meaning of the Law.

By exercising its managerial prerogative to assign all arraignments to one member of the bargaining unit, the Town of West Bridgewater has reduced the amount of overtime available to arresting officers. The arraignment work previously performed by arresting officers on an overtime basis was not, however, the type of regularly scheduled overtime we found to be equivalent to a wage item in Peabody. Here, as in Town of Billerica, the availability of overtime was merely a by-product of the Town's staffing patterns and did not constitute a term or condition of employment. Further, the loss of the unscheduled overtime in the instant case was the inevitable consequence of the Town's legitimate management decision to deploy its personnel more effectively. Where, as here, the only impact of a legitimate

mangerial decision is a reduction in the employees' ability to perform unscheduled overtime and no other terms or conditions of employment are affected, bargaining is not required.

Because neither the Town's decision to assign all arraignment work to one officer nor the impact of that decision on overtime opportunities triggered a bargaining obligation, we hold that the Town did not violate the Law when it unilaterally changed its court appearance practice.[9] The Complaint in this matter is therefore DISMISSED.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman
JOAN G. DOLAN, Commissioner
GARY D. ALTMAN, Commissioner

[9]Because we have determined that the Town had no obligation to bargain with the Association about the decision to change its court appearance practice or the impact of that decision on overtime opportunities, we need not address the issues raised by the Town in its supplementary statement.