

**Improper Practice Decisions**

¶39-4562

In the Matter of

COUNTY OF OSWEGO and OSWEGO  
COUNTY SHERIFF,

Charging Party,

and

OSWEGO COUNTY DEPUTIES ASSOCIA-  
TION,

Respondent.

Case No. U-26297

Before M. LYNN FITZGERALD, Administrative  
Law Judge; May 3, 2006

INDEX NOS. 43.116, 43.153, 43.447, 55.91,  
55.92

A county deputy's association violated § 209-a.2(b) insofar as its proposals for a basic work week and for annual leave accrual were not arbitrable under § 209.4(g) of the Act. Although the association contended the demands were mandatory subjects of bargaining, the ALJ concluded both demands were non arbitrable because they related primarily to scheduling and hours of work respectively. Even though the work week demand would give employees an option to increase the amount of compensation which could be earned in one work-day, the ALJ noted that a change in scheduling would not result in any greater compensation for time worked. The ALJ similarly noted that all demands for paid time off from work were nonarbitrable because they were only indirectly related to compensation. However, the association's overtime premium proposal was arbitrable because the demand related primarily to payment for the performance of additional work, and thus fell within the definition of compensation for purposes of § 209.4(g).

*Rocco A. DePerno, Esq.* for Charging Party

*Röemer, Wallens & Mineaux (William M. Wal-  
lens of counsel),* for Respondent

**Decision of Administrative Law Judge**

On October 18, 2005, the County of Oswego and Oswego County Sheriff (County) filed an improper practice charge alleging, as amended, that the Oswego County Deputies Association (Association) violated § 209-a.2(b) of the Public Employees' Fair Employment Act (Act) by submitting several proposals for compulsory interest arbitration which are nonmandatory or are not arbitrable pursuant to § 209.4(g) of the Act. The Association filed an answer denying the allegations, and further asserting that the County has placed the same issues before the panel by virtue of its own proposals and is, therefore, precluded from objecting to their arbitrability.

The parties submitted the matter for decision on a stipulated record. They each filed a brief.

The record consists of the charge, the answer, the expired collective bargaining agreement, the petition for interest arbitration, the County's letter of February 21, 2006 wherein it amended the charge by withdrawing the objection to the arbitrability of two Association proposals, and the Association's letter of February 24, 2006 confirming that it had withdrawn several proposals from arbitration.

The parties' collective bargaining agreement expired December 31, 2003. Following unsuccessful negotiations, the Association filed a petition for compulsory interest arbitration on October 12, 2005, submitting 17 proposals to arbitration.

As amended, three of those proposals are challenged by the County as nonmandatory subjects of bargaining which are nonarbitrable under the provisions of § 205.6 of the Rules, or alternatively nonarbitrable under § 209.4(g) of the Act, which provides limited interest arbitration rights for deputy sheriffs on matters directly relating to compensation.

Section 209.4(g) of the Act provides, in pertinent part, as follows:

... the provisions of this section shall only apply to the terms of collective bargaining agreements *directly relating to compensation*, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall *not apply to non-compensatory issues* including, but not limited to, job security, disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions prescribed by law. (emphasis added)

The Board set forth the general framework for determining whether a demand fell within the definition of "directly relating to compensation" in *County of Putnam and Putnam County Sheriff*, 38 PERB ¶ 3031 (2005). There it adopted its holding in *New York State Police Investigators Association*, 30 PERB ¶ 3013 (1997),<sup>1</sup> which interpreted identical statutory language in the former § 209.4(e) of the Act (regarding interest arbitration for certain members of the Division of State Police), in determining which demands directly related to compensation:

The degree of a demand's relationship to compensation is measured by the characteristic of the demand. If the sole, predominant or primary characteristic of the demand is compensation, then it is arbitrable because the demand to that extent directly relates to compensation. *A demand has compensation as its sole, predominant or primary characteristic only when it seeks to effect some change in amount or level of compensation by either payment from the State to or on behalf of an employee or the modification of an employee's financial obligation arising from the employment relationship (e.g., a change in an insurance co-payment).* If the effect is otherwise, then the relationship of the demand to compensation becomes secondary and indirect and the subject is, therefore, excluded from the scope of

compulsory arbitration under the language of § 209.4(e).<sup>2</sup> (emphasis added)

The following proposals are challenged by the County and will be addressed separately.

Proposal 2

Section 13.1—Basic Work Week: Option of an eight, ten or twelve hour work day.

Proposal 2 would provide the option of a ten or twelve hour workday from the current eight hour day. The Association argues that the demand is mandatory and directly related to compensation in that it would give employees an option to increase the amount of compensation which the employee may earn in one workday. The County argues that § 209.4(g) of the Act specifically excludes deployment and scheduling as issues which may be submitted to interest arbitration.

While a demand to alter scheduling which does not interfere with management's right to determine manpower needs is generally a mandatory subject of bargaining,<sup>3</sup> § 209.4(g) of the Act expressly prohibits interest arbitration demands regarding scheduling. While deputies would necessarily earn more per day if they worked more hours per day, a change in scheduling would not result in any greater compensation for time worked. The proposal is, therefore, found to be one primarily of scheduling rather than compensation, and not arbitrable pursuant to the explicit language of § 209.4(g) of the Act.

Proposal 3

Section 13.2—Overtime Premium: Employees hired on or after January 1, 2001 shall be permitted to accrue compensatory time.

Options to convert all overtime to compensatory time.

Employees required to work overtime for any reason ... shall be entitled to time and one-half ...

The parties' expired collective bargaining agreement currently provides, in pertinent part, as follows:

### 13.2 Overtime Premium

Overtime shall mean an employee is required to work in excess of the basic work day or work week. Overtime must have the prior approval of the Sheriff or his authorized designee.

Employees required to work overtime for any reason other than training, including qualification with a weapon, or the on-call provision of this agreement, shall be eligible for an overtime premium pay at one and one-half (1 1/2) their regular hourly rate.

Compensatory time will only be permitted for field days, County Fair, and regular road patrol.

Employees hired on or before January 1, 2001, will be allowed to accrue a maximum of 200 hours of compensatory time. Hours earned in excess of the 200 hour limit will be paid hours regardless of designation ...

All accrued compensatory hours will be "cashed out" with the last full paycheck in the calendar year. Employees will be paid for compensatory hours accrued at the hourly rate earned at the time the calculation is made.

Employees hired effective January 1, 2001, shall not be permitted to accrue any compensatory time.

The proposal would provide for overtime pay at time and one-half for all overtime assignments, and further provide that all employees, including those hired after January 1, 2001, would have the option to elect either overtime pay or compensatory time as payment.

Compensation for overtime work is generally a mandatory subject of bargaining,<sup>4</sup> and is

arbitrable under § 209.4(g) of the Act, except as to issues relating to eligibility for overtime.<sup>5</sup> The proposal at issue does not address eligibility for overtime, but the manner in which employees are compensated for overtime assigned to them.

The County's argument that the nature and major characteristic of the demand is time off with pay, citing to *New York State Police Investigators Association*, is misplaced. There the Board held demands for certain paid time off such as sick leave to be nonarbitrable, finding such leave to be more in the nature of time off from work without loss of pay, or hours of work, rather than compensation.<sup>6</sup> However, it found proposals concerning overtime compensation to be arbitrable in accordance with the language of the statute. The Board stated:

Just as the phrase "directly relating to compensation" cannot reasonably be interpreted to mean only "direct compensation," so, too, the phrase "issues relating to eligibility for overtime compensation" cannot be read to exclude from the scope of arbitration all proposals for "overtime compensation." If the Legislature had intended to exclude overtime compensation from the scope of arbitration, it never would have qualified "overtime compensation" appearing in § 209.4(e) with the words "issues relating to eligibility for." ...

The words "eligibility for" plainly refer to who among the unit employees would be eligible for or entitled to overtime pay. Any particular employee's eligibility for overtime was an issue the Legislature wanted to be governed by the applicable law ...<sup>7</sup>

The demand at issue is related primarily to payment for the performance of additional work. As overtime pay and compensatory time are primarily related to compensation, and clearly within the definition set forth in § 209.4(g) of the Act, I find the demand to be arbitrable.

Proposal 6

Section 15.2—Annual Leave Credit: 11-13 years/90.4 hours—23 days; 13-16 years/80.0 hours—26 days; 17—over/74.2 hours—28 days.

This proposal would increase the vacation leave accruals for employees after 13 years of service. Pursuant to § 15.3 of the collective bargaining agreement, employees may receive pay in lieu of annual leave, up to 50% of the leave earned in a calendar year, at full pay.

The arbitrability of demands for increases in annual leave pursuant to § 209.4(g) of the Act are controlled by the Board's decisions in *New York State Police Investigators Association and County of Putnam (supra)*. The Board considered annual leave demands in *New York State Police Investigators Association*, along with holidays, meal breaks, sick leave, and bereavement leave, finding all demands for paid time off from work to be nonarbitrable "because they are demands of a type relating predominantly or primarily to hours of work and only indirectly relating to compensation."<sup>8</sup> On that basis, I find the demand not arbitrable under § 209.4(g) of the Act.<sup>9</sup>

For the reasons set forth above, I find that the Association violated § 209-a.2(b) of the Act when it submitted the following demands to arbitration pursuant to § 209.4(g) of the Act:

Proposal 2—Basic Work Week.

Proposal 6—Annual Leave.

IT IS, THEREFORE, ORDERED that the Association withdraw the above demands from arbitration.

In all other respects, the charge is dismissed.

<sup>1</sup> Confirmed sub nom. *New York State Police Investigators Ass'n v. PERB*, 30 PERB ¶ 7011 (Sup Ct Albany County 1997).

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<sup>2</sup> 38 PERB ¶ 3031, at 3105; citing to 30 PERB ¶ 3013, at 3028.

<sup>3</sup> See *City of White Plains*, 5 PERB ¶ 3008 (1972).

<sup>4</sup> See *Town of Stony Point*, 6 PERB ¶ 3030 (1973); *Village of Spring Valley*, 14 PERB ¶ 7515, 80 AD2d 910 (2d Dept 1981).

<sup>5</sup> *County of Putnam and Putnam County Sheriff*, 38 PERB ¶ 4564, at 4697-98 (2005), *aff'd* 38 PERB ¶ 3031 (2005); *New York State Police Investigators Ass'n, supra*.

<sup>6</sup> *New York State Police Investigators Ass'n, supra*, at 3029.

<sup>7</sup> *Id.*, at 3030.

<sup>8</sup> *Supra*, at 3029.

<sup>9</sup> I also reject the Association's argument, as clarified in its brief, that the County is precluded from objecting to the arbitrability of the Association's annual leave demand by virtue of its own proposal on the subject. The County's proposal is not part of the record before me, therefore I decline to make any finding regarding it.

¶39-4563

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

and

COUNTY OF NASSAU,

Respondent.

Case No. U-25640

Before PHILIP L. MAIER, Administrative Law Judge; May 5, 2006

INDEX NOS. 42.42, 43.47, 72.589

A county did not violate its bargaining obligation by requiring employees in its parks and recreation department, who had unsupervised or regular and substantial

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