

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration Between:
TOWNSHIP OF SOUTH BRUNSWICK

-and-

Military Leave
Docket No. AR-2009-790

PBA LOCAL 166

Before: Susan Wood Osborn, Arbitrator

Appearances:

For the Township:
Apruzzese, McDermott, Mastro & Murphy, Attorneys
(Arthur Thibault, of Counsel)

For the Union:
Mets, Schiro & McGovern, Attorneys
(James Mets, of Counsel)

Witnesses:

Patrolman Robert Mazza
Chief Raymond Hayducka

ARBITRATION AWARD

In accordance with the parties' arbitration agreement, I was designated on June 30, 2009 to hear and decide this matter. The parties' collective agreement provides that the arbitration in this matter shall be final and binding. An arbitration hearing was held on October 13, 2009 at the South Brunswick Municipal Building, at which time the parties were given full opportunity to present testimony, documents and argument in support of their

respective positions. The parties filed briefs by November 23, 2009. The record closed on that date.

ISSUE

Did the Township violate Article XXIII of the parties' collective negotiations agreement by paying officers who are in the reserve component of the United States Military or the organized militia of the State of New Jersey for 8 hours instead of for their regularly scheduled work shift 9.25 or 10.5 hours, whichever applies, when on military leave? If so, what shall be the remedy?

BACKGROUND AND RELEVANT CONTRACT LANGUAGE

The PBA Local 166 represents police officers employed by the South Brunswick Police Department. The parties have a collective negotiations agreement (J-1), covering the period of January 1, 2008 through December 31, 2011. That agreement includes a grievance and arbitration procedure which provides in relevant part,

Article XXVI Grievance Procedure

6. Arbitration:

C. The arbitrator shall hold the hearing at a time and place convenient to the parties and no later than thirty (30) calendar days after his acceptance to act as arbitrator. The arbitrator shall issue his decision in writing with reasons within sixty (60) days after the close of the hearing. The decision of the arbitrator shall be served upon the Township and the PBA (or their legal counsel), in writing. In the event a disagreement exists regarding the arbitrability of an issue, the arbitrator shall make a preliminary determination as to whether the issue is arbitrable under the express terms of this Agreement. Once a preliminary determination is made that such a dispute is arbitrable, the arbitrator shall then proceed to

determine the merits of the dispute.

E. An arbitrator shall not have the power or authority to add to, subtract from, or modify the provisions of this agreement or the Laws of the State of New Jersey, and shall confine his decisions solely to the interpretation and application of this Agreement. He shall confine himself to the precise issues submitted for arbitration and shall have no authority to determine any other issues not so submitted to him. The arbitrator shall not submit observations or declarations of his opinions which are not relevant in reaching the determination. The arbitrator may prescribe an appropriate back pay remedy when he finds a violation of this Agreement, provided such remedy is permitted by law and is consistent with the terms of the Agreement.

Article VI, Hours of Work and Overtime, states in part,

A. Work Schedule. Effective September 1, 2001, officers shall work in accordance with the following schedule:

Patrol Division: ("Modified 3/3 Schedule") The work schedule shall consist of a 10.5 hour workday on a 28 day rotation of 3 days on/3 days off, 3 days on/3 days off, 2 days on/3 days off, 3 days on/3 days off, and 3 days on/2 days off for the patrol division.

Article XXIII Military Leave, states in part,

Paragraph C - In addition to the foregoing, officers shall receive all military leave in accordance with State and Federal law.

N.J.S.A. 38:23-1 guarantees full-time municipal employees serving in the United States Reserves to:

...leave of absence from his or her respective duty without loss of pay or time on all work days in which he or she shall be engaged in any period of Federal active duty, provided, however, that such leaves of absence shall not exceed 30 work days in a calendar year. Such leave of absence shall be in addition to the regular vacation or other accrued leave allowed such officer or

employee. Any leave of absence for such duty in excess of 30 work days shall be without pay but without loss of time.

N.J.S.A. 38A-4.4 contains similar provisions for paid leave of 90 work days for members of the State militia [New Jersey National Guard].

Standard Operating Procedure 1.31.3, Definitions, states in part,

Work Day - the period of time that all members of the collective bargaining unit are required to be present at work¹

S.1.31.2 of the SOP states at Section 3-B that time off for drill weekends, which are inactive duty training periods, will be in addition to the statutory leave time.

S.1.31.2 of the SOP reiterates word-for-word what the above sections of the statutes provide for as far as paid leave time for active duty.

FINDINGS OF FACT

Officer Robert Mazza has been employed by the Township for twelve years. He has been assigned to the Patrol Division for his entire career. Mazza has also been in the United States Navy Reserves for 25 years. He holds the rank of Hospital Corpsman, Master Chief. In 1991, prior to his employment with the Township, Mazza was deployed to active duty to serve in Operation Desert Storm. In 2003, Mazza was again called to active duty to serve in Operation Iraqi Freedom. During this deployment, the

¹This definition was most recently revised in 2007.

Township paid Mazza for his first 30 working days of military leave based on the 10.5 hour per day schedule. Thereafter, the Township paid him the difference between his military pay and his regular pay as a police officer. In 2006 the State reimbursed the Township for Mazza's 2003 active duty period in the amount of \$8,434.83 calculated at a salary of \$2,811.61 biweekly for three pay periods(T-2).

Mazza was again activated for reserve duty in 2006. At that time, he testified that he was paid day-for-day, meaning that he received pay until his 30 workdays were exhausted. He was not required to use vacation time.

Raymond Hayducka became the Chief of Police in 2005. Sometime in 2008, he realized that police officers on an 8-hour shift and those on a 9.25 or 10.5 hour shift were being given different number of hours a year military leave because the length of their workday differed. He decided to standardize the total military leave allotted for all police officers. Based upon the statutory entitlement of 30 days paid military leave a year for Reservist active duty, he devised this formula: 30 days x 8 hours a day = 240 hours a year. He decided to apply this formula for all Reservist officers. Hayducka spoke with Lt. Colonel Jack Dilly of the State Department of Veterans Affairs and Tom LaBue, State Department Office of Management and Budget. He came to understand from these conversations that the State

would reimburse the Township for military leave time up to 30 days, and that, for reimbursement purposes, the State interprets a work day as 8 hours irrespective of the actual length of the employee's workday.

Hayducka also noted that since 2001, when the Township and the PBA negotiated for the modified 3/3 work schedule and holidays were rolled into base pay, the holidays are calculated on an 8-hour work day and not calculated on the number of hours of a particular officer's shift. He noted that vacation and sick days were also converted to hours in 2001. Hayducka wanted to standardize all leave time to be calculated in hours. Hayducka believed that this formula would be the fairest for all officers, as they would have the same amount of military leave hours independent of their work schedule. He decided to implement his formula. Hayducka created a bank of time of 240 hours for Reservists (30 days paid military leave x 8 hours a day), and 720 hours (90 days paid military leave x 8 hours a day) for New Jersey National Guard members.

In 2008, Mazza was activated for duty several times, the latest of which was for the period November 30 to December 12 (U-3). Once he exhausted 240 hours of paid military leave (30 days X 8 hours per day), he was required to take 2 vacation days (November 30 and December 5, 2008) to cover his military time (U-2).

Mazza and the PBA met with Chief Hayducka to discuss paid military leave. Hayducka explained that the Township had paid Mazza an aggregate of six weeks of military leave time based upon a bank of 240 hours a year. Mazda had exceeded his 2008 bank of 240 hours, and had to use 2 vacation days or take leave without pay. He opted to use the vacation days. This grievance ensued.

In 2009, Mazza was again called to active duty. Because he again exceeded the 240-day allotment for 2009, he was forced to use 2 vacation days (or take time without pay) for 2 days.

Officer Nathan LaBuda is also a member of the Reserves. He also works a 10.5 patrol shift. In 2006, when LaBuda was called to active duty, he was paid for the number of shifts he worked during the 30-day period.

In 2009, LaBuda was again activated. The State reimbursed the Township \$9526.26 for the 30-day period of LaBuda's active duty service (T-3). By letter of February 20, 2009, the State OMB explained that "The reimbursement for 2009 is for 30 working days calculated at a salary of \$3,175.42² biweekly for three pay periods for a total of \$9526.26." (T-3). LaBuda was paid \$9381.90 for his active duty period. While the calculation for the amount of the State's reimbursement is not explained in the record, each party offered an explanation of the amount LaBuda

²According to the Supplemental Pay Worksheet T-1, LaBuda's actual biweekly salary is \$3127.35.

actually received. The PBA offers that LaBuda's daily rate was \$312.73, based upon a 260-day work year. For 30 working days pay at a daily rate of \$312.73, he would equal 9381.90.³ Therefore, the PBA contends that LaBuda was paid for 30 working days. The Township asserts that, by dividing LaBuda's annual salary of \$81,311 by 2080 work hours a year results in an hourly rate of \$39.09. Multiplying \$39.09 by 240 hours equals \$9382 pay for 30 days military leave, which is what LaBuda was paid. It points out that, had it paid LaBuda for 30 working days at 10.5 hours a day, LaBuda would have been owed \$12,313.93 for the period of his military service.

Regardless, I find that in 2009, LaBuda was paid in accordance with the Chief's 240-hour formula. In any event, I find that the Township's treatment of LaBuda's military leave in 2006 sheds no light on the past practice of military leave, since it was after Chief's 2008 decision to standardize the leave benefit at 240 hours a year for Reservists.

DISCUSSION

The PBA maintains that the Township violated the contract by failing to provide officers the statutorily required 30 working

³The PBA points out that officers working a 10.5 hour shift who receive 240 hours of paid military leave time would be paid for 22.86 working days. PBA argues that if LaBuda were paid for 22.86 working days, he would have received only \$7149, not the \$9381 he actually was paid. However, this logic is flawed. The "daily rate": of \$312.73 is based on 260 working days of eight-hour tours, not on 10.5-hour tours.

days of paid military leave for federal Reservists and 90 working days for members of the National Guard. It argues that the respective statutes, which refer to "work days," require that an officer be paid for 30 full working days of military leave when called to active duty, regardless of the length of their work day. The PBA also cites a Department of Community Affairs, Division of Local Government Services Bulletin, LFN No. 2004-14, issued July 15, 2004, which interprets State Mandated Reimbursement for an employee's military leave. That Bulletin states at page 4,

The routine work schedule of the individual is the basis for calculating the mandate obligation for the State reimbursement. For example, law enforcement officers or firefighters that do not work 5 days on/2 days off schedules would be calculated on a case-by-case basis, using the individual's normal schedule.

The PBA also cites a federal district court case in Minnesota which interprets the Minnesota Military Leave Act. That statute requires public employees to be paid for military leave for a period of "up to 15 days." The Court held that a firefighter on a 24-hour shift was entitled to the full shift off with pay. It concluded that there was nothing in the Minnesota statute to suggest that a "day" is anything less than a 24-hour period. The PBA argues that the New Jersey statute is even clearer because it defines the paid leave period as a "work day." Further, it maintains that, even if there were any ambiguity in the statutory definition of work day, all ambiguity was erased

when the Township revised SOP 1.31.3 in 2007 to define a work day as "the period of time that all members of the collective bargaining unit are required to be present at work." It asks that Mazza be recredited for his lost 2 vacation days in 2008 and 2 vacation days in 2009.

The Township maintains that its conversion of 30 days paid military leave to 240 hours a year did not violate the contract or the statutes. It contends that its actions in using 8 hours as a "work day" are consistent with the method used by State Veteran's Affairs in calculating its reimbursement obligations to the municipality. It avers that conversion to eight-hour work days is also consistent with the application used by the New Jersey State Police. Further, it follows the method used in calculating overtime and vacation time by converting such leave to hours. The Township also cites Koppie v. Strode, 761 N.E.2d 455 (Ind. Ct. App. 2002), in which the Indiana court rejected a firefighter's argument that a military leave "day" should be based upon his 24-hour shift rather than an eight-hour workday. It also points out the Merit System Board in Wentz v. Salem County Correctional Facility, OAL Docket No. CSV 375-02, 12/14/02, held that a five-day suspension is equal to five days of eight hours, or 40 hours, even though the appellant worked 12 hour shifts.

In addition, the Township points out the officers on a 10.5

hour shift work 182 days a year, while those on a 9.25 hour shift work 208 days a year, while those on an 8-hour tour work 260 days a year.⁴ Thus, an officer on the 10.5 hour shift has less likelihood of having his active duty days coincide with his work shift, since he is off more days than he is working. It argues that the conversion of "30 days" to 240 hours equalizes the paid military leave benefit for all police officers who are called to active duty, regardless of their work shift.

Finally, the Township notes that, prior to the 2008 conversion to hours, the granting of military leave was handled inconsistently. Some officers were paid day-for-day; others were paid for a six-week period. Therefore, the Township argues, the PBA cannot rely on any past practice to support its position.

* * *

My role is to interpret the parties' collective agreement. Article XXIII of the Agreement specifically incorporates by reference both statutes providing for paid military leave. N.J.S.A. 38:23-1 and 38A:4-4 provide for,

leave[s] of absence from his/her respective duty without loss of pay or time on all work days on which he or she shall be engaged in any [federal or state] active duty provided however that such leave shall not exceed 30 [90] working days in any calendar year.
[emphasis mine]

⁴The Township's analysis of the number of work days per year is based on the 2009 calendar.

There is no authorization in the statute for converting military leave time to hours. Rather, the statute refers to work days. Taking the language literally, if the employee is "engaged in active duty" and that duty falls "on a work day", then the leave time is to be "without loss of pay." It appears that the legislature intended that an employee called to active duty should not suffer any loss of pay or time for their military service. However, the statute also imposes a cap in the number of such days - 30 work days for federal Reservists and 90 days for members of the National Guard. While the Township has construed this language to mean 30 eight-hour work days, I find no basis for that interpretation.⁵

Further, the State Department of Community Affairs, in LFN Bulletin 2004-14 has clarified the definition of work day for State reimbursement purposes as "the routine work schedule of the individual..." It specifically says that paid military leave for police officers or firefighters that do not work a 5 days on/2 days off schedule should be calculated using the individual's normal schedule. Here, the "normal work schedule" for some officers is a 10.5 hour shift or a 9.25 hour shift. Thus, by calculating the time based on their "normal work schedule," and by granting paid military leave for each day that an employee's

⁵The court cases interpreting Minnesota and Indiana statutes are of course in conflict with one another. However, they interpret their respective state statutes, not New Jersey's.

active duty falls on a work day, an employee would be paid for each and every actual work day, regardless of the length of the shift. When the employee/reservist reaches the maximum of 30 such work days, then he or she is out of paid military leave time. The same would be true for members of the National Guard - they would be paid for each working day, regardless of the length of the shift, up to 90 such working days.

Even without the Department of Community Affairs Bulletin explaining the method calculating reimbursement, the Township's own Standard Operating Procedures, revised in 2007, defines what is a work day: "all those hours during which an employee is required to be at work." Thus, by the Township's own definition, a work day is the employee's actual work shift.

It appears that the State OMB's calculations for reimbursing the Township in 2006 and 2009 were not in line with the State Department of Community Affairs Bulletin but instead were based upon a six-week work period, notwithstanding that the officers had not used up 30 work shifts of paid active duty time. This is a fight the Township needs to have with the State. Officers are entitled to the 30 working days paid leave, and should not be penalized because the State did not follow its own method of calculating time.

I recognize the Township's argument that giving officers a paid military leave day, regardless of shift length, will create unevenness in the total number of hours employees will get

annually. Either method of calculation potentially disadvantages someone.

The Township argues that paid military leave time should be treated similarly to other kinds of paid leave (vacation, sick leave and holidays). However the conversion of those leave times was first negotiated with the PBA and are set forth in the contract. Paid military leave is statutorily set at 30 work days.

CONCLUSION

The Township violated Article XXIII of the parties' collective negotiations agreement by paying officers who are in the reserve component of the United States Military or the organized militia of the State of New Jersey for 8 hours instead of for their regularly scheduled work shift 9.25 or 10.5 hours, whichever applies, when on military leave.

AWARD

The grievance is sustained. The Township is ordered to credit Officer Robert Mazza with four vacation days. The Township is ordered to make whole any other police officer so affected by its 2008 conversion of 30 military paid leave days to 240 hours. The Township is directed to comply with the statutory minimum of 30 work days (defined as the normal work shift on any given day) paid military leave for Reservists and 90 work days for members of the New Jersey National Guard while on active duty.

Susan W. Osborn

Susan Wood Osborn
Arbitrator

DATED: February 4, 2010
Trenton, New Jersey

State of New Jersey }
County of Mercer }

On this 4th day of February, 2010, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Katherine T. Moran

KATHERINE T. MORAN
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