

I.R. NO. 95-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Petitioner,

-and-

Docket No. SN-95-26

HOBOKEN UNIFORMED FIREFIGHTERS  
ASSOCIATION, LOCAL 1078,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain arbitration as urged by the City of Hoboken. Local 1078 sought to arbitrate a grievance requiring bargaining unit members to perform superior officer duties without training and compensation. Compensation for temporary assignments to a higher rank is negotiable.

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Appearances:

For the Petitioner  
Murray, Murray & Corrigan, attorneys  
(Linda Sabat, of counsel)

For the Respondent  
Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, attorney  
(David Solomon, of counsel)

INTERLOCUTORY DECISION

On September 23, 1994, the City of Hoboken filed a scope of negotiations petition with the Public Employment Relations Commission seeking to restrain an arbitration brought by the Uniformed Firefighters Association, Local 1078 against the City and scheduled for October 6, 1994. The grievance to be arbitrated states: "whether the City violated the contract by ... requiring bargaining unit members to perform superior officers duties without

training and without compensation."

The City's scope of negotiations petition states that it seeks "an injunction of the grievance arbitration on the grounds of preemption by State law and non-negotiability/non-arbitrability. Since State Department of Personnel regulations provide specific recourse for the Union's claim, binding arbitration on the claim is preempted by State Law."

An Order to Show Cause was executed and a return date was set for October 5, 1994 at which time the parties presented evidence and argued orally.

The City argues that during a fire, when there are two captains in a double company, it is the usual practice to have one captain and two subordinates. When there is only one captain in a double company, the captain will ride the hook-and-ladder truck with two subordinates while the other three subordinates ride the pumper. This situation, where a subordinate rides in the passenger seat is called "riding the seat." The City argues that the union alleges this seat is where the captain would sit should she/he be on the pumper and is the gravamen of the union's grievance. The City argues that the subordinates do not possess more duties when a double company is supervised by one captain nor do subordinates take on captain's duties.

The City further argues that the relief sought by the union is preempted by Department of Personnel Rules. If the union claims that the individuals involved are, in fact, fire captains, they have

a right to make an appeal to the Department of Personnel pursuant to N.J.A.C. 4A:3-3.4.

Local 1078 argues that the collective negotiations agreement between it and the City provides firefighters may temporarily act in a higher rank. The sole issue here is whether a firefighter, when carrying out the duties of a higher rank, must be compensated at the rate of the higher rank. Local 1078 cites City of Camden, P.E.R.C. No. 93-43, 19 NJPER 15 (1992) aff'd App Div. 20 NJPER 319 (1994) and City of Atlantic City, P.E.R.C. No. 90-125, 16 NJPER 415 (1990).

In a scope of negotiations petition,

(t)he 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. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) at 154.

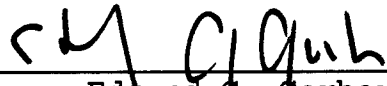
In Camden, the Commission held that compensation for employees temporarily assigned to a higher rank is legally negotiable. DOP statutes and regulations do not appear to address temporary appointments.

Accordingly, here the demand to arbitrate over compensation when acting as a captain is not an illegal subject of negotiation.

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The request for restraint of arbitration is denied.

  
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Edmund G. Gerber  
Commission Designee

DATED: October 5, 1994  
Trenton, New Jersey