

I.R. NO. 2012-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Petitioner,

-and-

Docket No. SN-2012-041

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS LOCAL 1197,

Respondent.

Appearances:

For the Petitioner, DeCotiis, Fitzpatrick & Cole, LLP,
attorneys (Louis N. Rainone, of counsel)

For the Respondent, Kroll Heineman Carton, attorneys
(Raymond G. Heineman, of counsel)

INTERLOCUTORY DECISION

On February 1, 2012, the Township of Edison (Township) petitioned for a scope of negotiations determination and filed an application for interim relief seeking a temporary restraint of binding arbitration pending a final determination by the Commission. The Township seeks a temporary restraint of binding arbitration of a grievance filed by the International Association of Firefighters Local 1197 (Local 1197) on March 17, 2011. The grievance asserts that the Township failed to pay firefighter/EMT differential payments in violation of the parties' collective

negotiations agreement (CNA).^{1/} The Township filed a brief and certification in support of its application. The Township asserts that the transfer of the firefighter/EMT duties to civilian emergency medical technicians (EMTs) is a managerial prerogative and not subject to negotiation.

On February 7, 2012, acting as Commission Designee pursuant to N.J.A.C. 19:14-9.2(d), I issued an Order to Show Cause without temporary restraints specifying February 16 as the return date for argument via telephone conference call. On February 13, Local 1197 filed a brief, certification and exhibits opposing the interim relief request. On February 16, the parties argued orally via telephone conference call. At the conclusion of the conference call, I orally issued a temporary restraint of arbitration of the grievance.

The following material facts are based on certifications and documentation provided by the parties.

Local 1197 represents a unit of non-supervisory firefighters, firefighter/EMTs, and firefighter/inspectors employed by the Township. Local 1197 and the Township are

^{1/} In February 2011, Local 1197 filed an unfair practice charge alleging that the Township unilaterally transferred emergency medical services work from Local 1197's negotiations unit to emergency medical technicians (EMTs) in another unit. On December 30, 2011, the Director of Unfair Practices administratively dismissed the charge. Local 1197 has appealed that decision to the Commission and it is still pending.

parties to a CNA with a term of January 1, 2010 through December 31, 2013. The grievance procedures end in binding arbitration.

For many years, emergency first aid response in the Township has been provided jointly by civilian EMTs, both volunteer and employees^{2/} of the Township, and by Local 1197 firefighter/EMTs who were assigned to the firefighter/EMT rotation as set forth in the parties' CNA^{3/}. The Local 3397 civilian EMTs worked from 6 a.m. to 7 p.m. Monday through Friday and the firefighter/EMTs worked 7 p.m. to 6 a.m. Monday through Friday and covered the entire weekends. Only firefighter/EMTs assigned full time to the rotation received a salary differential.

The Township has filed the certification of its Business Administrator, Maureen Ruane. Ruane asserts the following, in pertinent part, with respect to the elimination of the firefighter/EMT rotation:

9. On January 15, 2011, faced with a severe manpower shortage and after determining that trained firefighters were better used fighting fires, the Township eliminated the Firefighter/EMT rotation, and the Township began assigning all emergency services

-
- 2/ Local 1197 provided the CNA between the Township and the International Association of Firefighters, AFL-CIO Local 3997 (Local 3397), (which represents a unit of all full-time and regular part-time EMTs employed by the Township) with a term of March 12, 2004 through December 31, 2007.
- 3/ Article 49, "FIREFIGHTER/EMTS" provides for a 6% salary differential for EMT-D personnel and a 7% salary differential for Senior-EMT personnel assigned to the rotation.

response work to the Township's civilian EMTs – both professional and volunteer.

10. As firefighters were no longer assigned to provide emergency medical services, the Township notified the firefighters formerly assigned to the Firefighter/EMT rotation that they would be reassigned to non-EMT assignments. This change was effective January 25, 2011.

11. The reassignment of duties was a policy decision intended to more efficiently provide emergency medical services to the community, while simultaneously freeing up firefighters to fight fires.

12. No firefighters have been demoted or laid off as a result of this policy decision.

The Local 1197 asserts that the grievance in this matter concerns compensation and not the elimination of the firefighter/EMT rotation. More specifically, the grievance is about the payment of the differential to firefighter/EMTs that have continued to respond to emergency medical service calls after the January 2011 elimination of the firefighter/EMT rotation.^{4/}

^{4/} Counsel for the Township advised during oral argument that the procedure employed by the Township for emergency medical service calls since the elimination of the firefighter/EMT rotation is to dispatch the civilian ambulance crew and the closest fire or police unit to the location of the call. If the ambulance arrives first, the fire or police unit is re-assigned and the ambulance crew handles the call. If the fire or police unit arrives first, fire or police personnel begin emergency medical service if necessary until the ambulance arrives. Counsel for the Local 1197 did not dispute that this was the procedure being employed by the Township.

The Township responds that the payment of the differential pay was for the full time assignment to the firefighter/EMT rotation, and since the elimination of the rotation was non-negotiable, the payment of the differential is similarly non-negotiable and non-arbitrable.

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975). Where a restraint of binding grievance arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 155 (1978); Bd. of Ed. of Englewood v. Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975); City of Newark, I.R. No. 2005-4, 30 NJPER 459, 460 (¶152 2004).

The Commission's jurisdiction is narrow. Ridgefield Park at 154, states:

The 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.

Thus, the Commission does not consider the contractual merits of the grievance or any contractual defenses the Township may have.

The scope of negotiations for firefighters and police officers is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police officers:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of

employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

[87 N.J. at 92-93; citations omitted]

Because this dispute involves a grievance, arbitration is permitted if the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

In City of Jersey City v. Jersey City POBA, 154 N.J. 555, 568 (1998), the New Jersey Supreme Court held that the negotiability balancing test set forth in Local 195 must be explicitly applied to determine whether in a given set of circumstances, an employer may unilaterally transfer duties previously performed by police officers to civilians. That test provides:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[88 N.J. at 404-405]

In applying the dispositive third prong, the Court agreed with the City that its actions (civilianization of dispatching duties) were taken primarily to augment its ability to combat crime by increasing the number of police officers in field positions. It concluded that because the City implemented the reorganization for the purpose of improving the police department's "effectiveness and performance," and not primarily for economic reasons, the City's actions constituted an inherent policy determination that under Local 195, would be impermissibly hampered by negotiations. Jersey City at 573.

In this case the Township eliminated the firefighter/EMT rotation after being faced with a severe manpower shortage which resulted in a "policy decision intended to more efficiently

provide emergency medical services to the community, while simultaneously freeing up firefighters to fight fires."^{5/}

Additionally, since the elimination of the firefighter/EMT rotation was not primarily for economic reasons based on these facts, under Jersey City, the unit work rule is not applicable. Id. at 573. See Bogota Boro., P.E.R.C. No. 99-77, 25 NJPER 129 (¶30058 1999).^{6/}

Scope of negotiations determinations must be decided on a case-by-case basis. Troy v. Rutgers, 168 N.J. 354, 383 (2000). Based on the facts of this case I find that the Township had a non-negotiable managerial prerogative to eliminate both the firefighter/EMT rotation and the differential that was paid solely for the assignment to that rotation. Accordingly, allowing arbitration of Local 1197's claim to retain the firefighter/EMT differential for being assigned EMT duties on a non-regular basis would substantially limit the Township's policy goal of assigning the EMT work to civilian EMTs on a regular basis in order to have firefighters primarily fight fires. It follows, that the differential compensation claim is not

^{5/} The Commission requires that all briefs recite all pertinent facts supported by certification(s) based upon personal knowledge. See N.J.A.C. 19:13-3.5(f)(1). Local 1197 did not assert that the Township eliminated the firefighter/EMT rotation for economic reasons in its certification of Robert Yackel, its President.

^{6/} The certification of Yackel cites Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112), recon. den. P.E.R.C. No. 89-119, 15 NJPER 288 (¶20128 1989), a unit work rule decision.

severable from the Township's decision to eliminate the firefighter/EMT rotation as it does not meet the severability test set forth in Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382, 388 (App. Div. 1985) since it would cause a significant interference with the determination of governmental policy.

As a result, I find that the Township has established a likelihood of success on the merits of its scope petition. Therefore I find that the Commission is likely to find the grievance is not legally arbitrable.

ORDER

The request of the Township of Edison for an interim restraint of binding arbitration is granted pending the final decision or further order of the Commission.



David N. Gambert
Commission Designee

DATED: March 9, 2012

Trenton, New Jersey