

P.E.R.C. NO. 2009-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2009-008

POLICE SUPERIOR OFFICERS'
ASSOCIATION OF NEWARK,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the City of Newark's request for a restraint of binding arbitration of a grievance filed by the Police Superior Officers' Association of Newark. The dispute involves an allegation that the City violated the parties' collective negotiations agreement when it denied a former police lieutenant a request for a personnel order specifying that he retired on a disability pension. The Commission grants the request for a restraint over that issue.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2009-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2009-008

POLICE SUPERIOR OFFICERS'
ASSOCIATION OF NEWARK,

Respondent.

Appearances:

For the Petitioner, Julien X. Neals, Corporation
Counsel (Brendan E. Egan, Assistant Corporation
Counsel, on the brief)

For the Respondent, Police Superior Officers'
Association of Newark (John J. Chrystal, III, on the
brief)

DECISION

On August 6, 2008, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a portion of a grievance filed by the Police Superior Officers' Association of Newark. The dispute involves an allegation that the City violated the parties' collective negotiations agreement when it denied a former police lieutenant a request for a personnel order specifying that he retired on a disability pension. We grant the request for a restraint over that issue.

The parties have filed exhibits and briefs. These facts appear.

The SOA represents sergeants, lieutenants and captains. The parties entered into a collective negotiations agreement effective from January 1, 2005 through December 31, 2008.

On March 8, 1998, a police lieutenant was suspended from duty without pay and charged with violation of department rules and regulations.

On April 17, 1998, the lieutenant filed for an accidental disability retirement pension with the New Jersey Police and Firemen's Retirement System ("PFRS"). The application was denied and an appeal was filed.

On October 1, 1999, the lieutenant pled guilty to an offense in the Essex County Superior Court and was sentenced to three years' probation and the forfeiture of his position as a police officer. He was subsequently removed from employment.^{1/} A Final Notice of Disciplinary Action was issued. His retirement application remained under appeal with the PFRS.

1/ The City is a Civil Service jurisdiction. The lieutenant was a permanent employee. The City followed Civil Service procedures to charge the lieutenant with offenses. The Final Notice of Disciplinary Action "removed" the lieutenant from his position. "Removed" is the Civil Service term used to denote involuntary loss of employment for disciplinary reasons. N.J.A.C. 4A:2-2.2. The parties use both "terminated" and "removed" to describe the lieutenant's status.

On September 11, 2006, the PFRS reconsidered and approved the lieutenant's application for a disability retirement retroactive to May 1, 1998.

On September 15, 2006, the Division of Pensions and Benefits notified the lieutenant that he was eligible for employer-paid health benefits for his lifetime. The City then granted the lieutenant retiree health benefits, including dental and prescription coverage.

On December 29, 2006, the SOA sent a letter to the Police Director advising that the lieutenant had received a disability pension and requesting any benefits under the 1998 collective negotiations agreement that he had retired under.

On March 15, 2007, the lieutenant's attorney requested that the City adjust the lieutenant's employment record to reflect his disability retirement.

On March 30, 2007, the SOA wrote to the Police Director that the SOA had demanded arbitration and listed these contract provisions as having been violated:

- Article 15, Accrued Compensatory Time
- Article 17, Seniority
- Article 18, Maintenance of Standards
- Article 19, Management Rights
- Article 20, Rules and Regulations
- Article 22, Extra Contract Agreements
- Article 24, Discrimination and Coercion
- Article 26, Association Privileges and Responsibilities
- Article 27, Savings Clause
- Article 28, Wages
- Article 29, Fully Bargained Provisions
- Article 30, Duration

Arbitration hearings were held on June 5 and July 21, 2008. Another date was scheduled for December 4, 2008.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), 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, we do not consider the merits of the grievance or any contractual defense the City might have.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), permits arbitration if the subject of 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 to have been violated is preempted or would substantially limit government's policymaking powers.

The City argues that the Civil Service Commission is the exclusive forum for appeals of disciplinary actions in Civil Service jurisdictions and that the grievance is an attempt to avoid that process.

The SOA responds that it is not seeking to arbitrate the merits of the lieutenant's major discipline. It asserts that it is seeking to have the City issue a personnel order to reflect the fact that PFRS granted the lieutenant a disability pension. It claims that the City has recognized that the lieutenant is retired and has afforded him other benefits that a retiree on a disability pension is entitled to under the parties' contract and State statute. The SOA claims that at least 11 other officers who were terminated and later granted a disability retirement had their terminations rescinded.

The City replies that the Civil Service Commission has the exclusive jurisdiction to amend the lieutenant's disciplinary status and that he chose not to avail himself of that process. It asserts that the authority of the PFRS to determine pension eligibility does not impact Civil Service status. As for the other officers referenced by the SOA, the City asserts that they are additional examples of matters preempted by the Civil Service Act.

We agree with the City that the SOA cannot arbitrate an appeal of major discipline. Under N.J.S.A. 34:13A-5.3, appeals of major discipline in local Civil Service jurisdictions must be made to the Civil Service Commission.

The SOA may not seek to have the Final Notice of Disciplinary action rescinded except by appeal to the Civil

Service Commission. Nor may the lieutenant have a court order of forfeiture rescinded without going to court. The SOA may seek to have some documentation in the personnel file reflecting the fact that the lieutenant is receiving a disability pension. But it may not arbitrate a claim that the lieutenant's final employment status should be changed from "termination" to "disability pension" absent prior action by the Civil Service Commission or a court of competent jurisdiction.

ORDER

The request of the City of Newark for a restraint of binding arbitration is granted to the extent the SOA seeks to require that the lieutenant's personnel record be changed to indicate that the lieutenant retired on a disability pension.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: January 29, 2009

Trenton, New Jersey