

P.E.R.C. NO. 2009-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Petitioner,

-and-

Docket No. SN-2009-048

STATE TROOPERS NON-COMMISSIONED
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the State of New Jersey's (Division of State Police) request for a restraint of binding arbitration of a grievance filed by the State Troopers Non-Commissioned Officers Association. The grievance challenges the transfer of a sergeant allegedly as a result of a disciplinary action taken without due process. The Commission restrains arbitration over the decision to transfer the grievant. The Commission notes that the Association did not identify any specific procedural issues in its grievance, demand for arbitration, or brief.

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.

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Appearances:

For the Petitioner, Anne Milgram, Attorney General of
New Jersey (Sally Ann Fields, Senior Deputy Attorney
General, on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky &
Bukosky, attorneys (Merick H. Limsky, on the brief)

DECISION

On February 11, 2009, the State of New Jersey (Division of
State Police) petitioned for a scope of negotiations
determination. The employer seeks a restraint of binding
arbitration of a grievance filed by the State Troopers Non-
Commissioned Officers Association. The grievance challenges the
transfer of a sergeant allegedly as a result of a disciplinary
action taken without due process. We restrain binding
arbitration.

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

The Association represents sergeants, detective sergeants, sergeants first class, and detective sergeants first class. The parties' collective negotiations agreement is effective from July 1, 2004 through June 30, 2008. The grievance procedure ends in binding arbitration.

Article VI is entitled "Transfer." It provides:

- A. Transfer orders will be communicated to the affected NCO as soon after their issuance as is practical.
- B. No NCO shall be transferred on less than ten (10) days notice to him of the proposed transfer, but this notice requirement does not apply to emergency reassignments.
- C. Any NCO submitting a request for transfer or consideration for a particular assignment shall receive from Division Headquarters or the Troop Commander, whichever is appropriate, an acknowledgment with a notification when a response will be transmitted, within two (2) weeks from such submission. Such response and acknowledgment shall be in writing.

Article XVI is the parties "Grievance Procedure." Article XVII is entitled "Internal Investigation Procedure." It provides for the establishment and the mechanics of procedures to be followed when an employee is questioned by an officer in connection with a State Police investigation. Article XX is a "Non-Discrimination" clause. Article XXIX is entitled "Complete Agreement. Among other things, it provides that "wages, fringe

benefits and terms and conditions of employment and the past practices related thereto . . . shall be maintained at the highest standards uniformly existing at the time of the agreement.

On September 18, 2008, the Troop B Administration Office forwarded two Field Operations Section memoranda to All Regional Commands, Stations, Offices and Unit Supervisors. On September 19, the grievant responded by e-mail to the Troop B Administration mailbox in what the employer characterizes as an inappropriate, unprofessional and disparaging manner. The Administration mailbox is a group e-mail box shared by several enlisted members and civilian personnel.

After the grievant sent the e-mails, the Troop B Commanding Officer ordered the grievant transferred from Tactical Patrol Unit Supervisor to Patrol Supervisor.

On September 19, 2008, the grievant was issued a Performance Notice as counseling for sending the e-mails. Also on that date, the Commanding Officer signed a Reportable Incident Form, which initiates an internal investigation.

On September 24, 2008, the grievant received notice of his transfer, which was effective October 11.

On September 25, 2008, the Association filed a grievance challenging the removal of the grievant from the position of Sergeant, Troop B, Tactical Patrol Unit #3 and the transfer to

the position of Patrol Sergeant, Sussex Station. The grievance states:

This member grieves the removal of same from the position of Sergeant, Troop B Tactical Patrol Unit #3 and the transfer of the member . . . as a result of disciplinary action taken without due process afforded above member.

More specifically, this member grieves the arbitrary and capricious removal of same member from the above position which is in direct violation of the Agreement . . . , in violation of Article VI (transfers), Article XVI (grievance procedure), Article XVII (Internal Investigation procedure), Article XX (non-discrimination), and Article XXIX (complete agreement).

Relief sought: The immediate rescission of personnel order 08-570 and placement of Grievant into said position of Sergeant, Troop B Tactical Patrol Unit #3.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v.

Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.

[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may 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. No preemption issue is presented.

The employer argues that transfer and reassignment decisions are inherent managerial prerogatives not subject to binding arbitration. It also states that since there are no procedural issues involved in the grievance, arbitration over the substantive assignment decision should be restrained.

The Association responds that contractual transfer procedures have been violated, as well as other procedures. It also argues that the transfer was for disciplinary reasons in violation of N.J.S.A. 34:13A-25.

The employer replies that the grievance challenges the substantive decision to transfer him from one assignment to another. It argues that the grievance itself fails to contain any facts as to procedural issues that are allegedly involved in the substantive transfer decision.

We restrain arbitration over the substantive decision to transfer the grievant. That issue is not legally arbitrable. State of New Jersey (Division of State Police), P.E.R.C. No. 2002-78, 28 NJPER 265 (¶33102 2002). Procedural claims may be submitted to binding arbitration, but the Association has not identified any specific procedural issues in either its grievance, demand for arbitration, or brief. Compare State of New Jersey (Division of State Police), P.E.R.C. No. 2008-37, 33 NJPER 335 (¶125 2007) (Commission did not consider procedural issues absent any specific procedural claims appearing in the grievances or the briefs); contrast State of New Jersey (Division of State Police) (permitting arbitration over separately identified procedural claim). N.J.S.A. 34:13A-25 is inapplicable because it prohibits disciplinary transfers of education employees, not police officers.

ORDER

The request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Watkins voted in favor of this decision. Commissioner Colligan voted against this decision. Commissioner Joanis was not present.

ISSUED: June 25, 2009

Trenton, New Jersey