

P.E.R.C. NO. 2011-53

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2010-086

FOP LODGE 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request for a restraint of binding arbitration of a grievance filed by FOP Lodge 12. The grievance asserts that the City violated the parties' collective negotiations agreement when it eliminated the detective stipend for officers reassigned from detective to patrol. The Commission holds that whether the stipend is linked to the detective assignment or the particular duties is a question of contract interpretation reserved to an arbitrator.

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, Julien X. Neals, Corporation  
Counsel (Melissa L. Longo, Assistant Corporation  
Counsel, on the brief)

For the Respondent, Markowitz & Richman, attorneys  
(Stephen C. Richman and Matthew D. Areman, of counsel)

DECISION

On April 27, 2010, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by FOP Lodge 12. The FOP asserts that the City violated the parties' collective negotiations agreement when it eliminated the detective stipend for officers reassigned from detective to patrol. We will permit arbitration over this compensation claim.

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

The FOP represents rank and file police officers. The parties' collective negotiations agreement is effective from

January 1, 2009 through December 31, 2012. The instant grievance arose under a former agreement that ran from January 1, 2003 through December 31, 2004. The grievance procedure ends in binding arbitration.

On September 8, 2004, the then Police Director issued a personnel order revising the status of nine police officers in the Auto Theft Task Force to rescind their detective status. On September 13, the FOP filed a grievance contesting the change in status for the nine officers. The parties were unable to resolve the grievance. The FOP demanded arbitration. This petition ensued.

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), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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.

[Id. at 92-93; citations omitted]

Arbitration will be permitted 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 is preempted or would substantially

limit government's policymaking powers. No preemption issue is presented.

The City argues that it has a non-negotiable managerial prerogative to decide who is a detective and to assign or reassign police officers. The City also argues that officers are entitled to detective stipends only during the course of their assignment as detectives.

The FOP responds that the City has misconstrued the intent of its grievance. It states that it does not contest the City's right to reassign the officers from detective to patrol, but rather seeks to challenge the loss of detective pay because their duties have remained largely unchanged.

The City replies that the detective stipend is tied to the detective assignment, not any specific duties.

We have often restrained arbitration over claims contesting the substantive decision to transfer a police officer from detective to patrol officer. See, e.g., Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998); Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991); City of Long Branch, P.E.R.C. No. 92-53, 17 NJPER 506 (¶22248 1991); City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990). The FOP, however, is not challenging the transfer decisions and instead is limiting its arbitration demand to a claim for detective pay.

Whether the stipend is linked to the detective assignment or the particular duties is a question of contract interpretation

reserved to an arbitrator. In City of Elizabeth, P.E.R.C. No. 2007-16, 32 NJPER 321 (¶133 2006), we held that a grievance asserting that the City had agreed to continue to pay detective stipends to officers it had reassigned to the patrol division would not substantially limit the employer's policymaking powers. See also Wayne Tp. (declining to restrain arbitration of a claim that the parties had agreed to permit transferred officers to retain the detectives' increment in recognition of their being more qualified, trained and experienced). We repeat, however, what we said in Wayne, "If the [FOP] cannot prove the existence of an agreement to continue the stipend after a transfer from the detective bureau, it would follow that the salary reduction was a direct consequence of the managerial decision to transfer the grievants." Id. at 44. Thus, absent such an agreement, an arbitrator cannot order that the officers continue to receive detective pay.

ORDER

The request of the City of Newark for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision.

ISSUED: December 16, 2010

Trenton, New Jersey