

P.E.R.C. NO. 2011-52

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Petitioner,

-and-

Docket No. SN-2010-066

PBA LOCAL #249,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Burlington for a restraint of binding arbitration of a grievance filed by PBA Local #249. The grievance challenges minor discipline issued to employees for violation of the County's lateness policy. The Commission holds that the grievance challenges minor discipline for which N.J.S.A. 34:13A-5.3 specifically authorizes binding arbitration.

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, Capehart & Scatchard, attorneys  
(Alan R. Schmoll, of counsel; Kelly M. Estevam, on the  
brief)

For the Respondent, Mark W. Catanzaro, attorney

DECISION

On February 23, 2010, the County of Burlington petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of ten grievances filed by PBA Local #249. Each grievance challenges minor discipline issued to an employee for violation of the County's lateness policy. We decline to restrain arbitration.

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

The PBA represents rank and file County correction officers. The parties' collective negotiations agreement is effective from 2005 through 2008. The grievance procedure ends in binding arbitration.

The County has disciplined eight employees for violating the lateness policy. The penalties range from a written reprimand to a five-day suspension. The PBA grieved each of the disciplinary actions. The parties were unable to resolve the grievances and the PBA 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.

The scope of negotiations for police officers and firefighters 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. 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. . . . 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 policy-making 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers. To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed.

Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Assn, 78 N.J. 54, 80-82 (1978).

The County asserts that it has a right to change its lateness policy and that these disciplinary actions stem from that change. The PBA responds that it is not challenging the County's lateness policy, but is grieving the discipline imposed for violating the policy.

N.J.S.A. 34:13A-5.3 specifically authorizes binding arbitration of minor discipline for all public employees except State troopers. Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997). Minor discipline includes reprimands, and fines and suspensions of five days or less. Ibid. Accordingly, the County's request for a restraint of binding arbitration is denied.

ORDER

The request of the County of Burlington for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: December 16, 2010

Trenton, New Jersey