

P.E.R.C. NO. 2013-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS and
MORRIS COUNTY SHERIFF'S OFFICE,

Petitioner,

-and-

Docket No. SN-2011-092

PBA LOCAL 298,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denied the request of the County of Morris and Morris County Sheriff's Office for a restraint of binding arbitration of a grievance filed by PBA Local 298. The grievance asserts the employer violated the parties' most recent agreement when it did not pay salary increments to several correction officers at the commencement of the next salary year. The Commission holds that the issue of a compensation is mandatorily negotiable.

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, Knapp, Trimboli & Prusinowski, LLC,
attorneys (Stephen E. Trimboli, of counsel)

For the Respondent, Lindabury, McCormick, Estabrook &
Cooper, P.C., attorneys (Paula D. Clark, of counsel)

DECISION

On June 9, 2011, the Morris County Sheriff and the County of Morris petitioned for a scope of negotiations determination. The petition seeks to obtain a restraint of binding arbitration of a grievance filed by PBA Local 298 asserting that the Sheriff and the County violated the most recent collective negotiations agreement between the parties by failing to pay salary increments to several correction officers at the commencement of the next calendar year.^{1/} Because issues of compensation are mandatorily negotiable and the joint employers have not shown that paying the

^{1/} As reflected in the parties' collective negotiations agreement, the County and the Sheriff are considered "joint employers."

increments would be preempted by any specific statute or regulation, we deny the request for a restraint of binding arbitration.

The parties have filed briefs, exhibits and certifications. These facts appear. The PBA represents rank and file corrections officers employed by the joint employers. The most recent agreement between the PBA and the joint employers expired on December 31, 2010.^{2/} The agreement has a "dual track" salary guide: one with nine steps for officers hired before January 1, 2001, the other, containing ten steps for employees hired after that date. Article 31: Duration provides:

This agreement shall be in full force and effect as of the first day of January 2007 and shall remain in full force and effect through the 31st day of December, 2010. If either party desires to modify or terminate this agreement, it must, no later than October 31, 2010, give written notice of its intention and furnish a copy of its proposals to the other party. In the event no such notice and proposals are received by October 31, 2010 this agreement shall continue in effect from year to year after December 31, 2010, subject to modification or termination by either party upon written notice given prior to March 31 of the succeeding year.

2/ The parties are currently engaged in interest arbitration proceedings to establish the terms of a successor agreement. The interest arbitration proceeding will also consider the terms of a successor agreement for superior officers of the joint employer represented by the PBA in a separate unit. The petitions were simultaneously filed by the PBA.

On February 6, 2011, PBA President Leon Pollison wrote to Under Sheriff Frank Corrente advising that several officers had not yet been advanced to their next step on the guides. The memo asserted that such advancement was required by past practice and that failing to pay the increments would violate Article 31 and could be the subject of an unfair practice charge.^{3/}

The PBA's grievance was denied and it demanded binding arbitration. This petition ensued.

A scope of negotiations determination answers a very narrow question and does not pass on the merits of a grievance alleging a violation of a collective negotiations agreement:

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.

[Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978)]

^{3/} The PBA has not filed an unfair practice charge with respect to this dispute.

Here, the Association seeks a determination that the failure to pay step increments at the beginning of the 2011 calendar year violated the parties' agreement.

Because this case involves law enforcement personnel, the standards for negotiability and arbitrability set by Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981) apply:

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.

Because this dispute involves a grievance, arbitration is 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). Thus, if we conclude that the PBA grievance is either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed.

As noted in Paterson, where a statute or regulation is alleged to preempt a negotiable term and condition of employment, it must do so expressly, specifically and comprehensively. See Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Assn, 91 N.J. 38, 44-45 (1982).

The joint employer acknowledges that because the most recent agreement expired prior to January 1, 2011, N.J.S.A. 34:13A-16.7 and 16.9 limiting the amount of salary increases that can be awarded by an interest arbitrator, do not apply.^{4/} But, it notes that the two per cent property tax levy cap will apply and cites three unfair practice cases where Atlantic County public safety employees were denied interim relief orders directing increments be paid even though their latest agreements also expired prior to January 1, 2011.^{5/}

4/ See Borough of Bloomingdale, P.E.R.C. No. 2011-77, 37 NJPER 195 (¶61 2011).

5/ Atlantic County, I.R. No. 2011-35, 37 NJPER 79 (¶29 2011); Atlantic County, I.R. No. 2011-36, 37 NJPER 80 (¶30 2011); Atlantic County, I.R. No. 2011-37, 37 NJPER 82 (¶31 2011).

In its reply brief the joint employer notes that as the Atlantic County cases held that it would be inefficient to require the employer to recoup excess amounts paid as increments that observation should also bar arbitration of the PBA grievance. The joint employer also points to negotiated settlements of other Morris County law enforcement units, that provided no advancement on the step guides for the 2011 calendar year. It urges that because a pattern of settlement is emerging a restraint of arbitration should be granted.

The PBA's brief distinguishes among unfair practice cases, with or without interim relief applications, interest arbitration proceedings and a grievance arbitration seeking a determination that an agreement has been violated. It asserts that the County's arguments concerning ability to pay, comparability, and pattern of settlement are not relevant to the issue raised in this scope of negotiations dispute.

Although other Morris County law enforcement units have agreed to one year extensions of expired agreements that include salary freezes, the PBA is not thereby barred from pursuing a grievance asserting that contract language required advancement of eligible employees to the next step on the salary guide at the beginning of 2011.^{6/}

^{6/} Apparently 74 of the 129 correction officers were not at the top step of the salary guides on December 31, 2010.

A grievance asserting that an employee is entitled to advancement on a salary guide is mandatorily negotiable. See Essex Cty. and AFSCME Council 52, Local 1247, P.E.R.C. No. 86-149, 12 NJPER 536 (¶17201 1986) and Essex Cty. and Essex Cty. Local Unit of JNESO, P.E.R.C. No. 87-48, 12 NJPER 835 (¶17321 1986), aff'd NJPER Supp.2d 182 (¶158 App. Div. 1987). Accordingly the joint employer's request for a restraint of arbitration is denied.^{7/}

ORDER

The request of the County of Morris and the Morris County Sheriff's Office for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones abstained from consideration. Commissioner Bonanni was not present.

ISSUED: September 27, 2012

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^{7/} Allowing this grievance to proceed to arbitration simply permits the PBA to make its argument to an arbitrator. It does not guarantee that its claim will be upheld. Nor does it deprive the joint employer from availing itself of post-arbitration challenges if the grievance is upheld. See N.J.S.A. 2A:24-1 et seq. Thus, the joint employer's concern about the possibility of having to recoup amounts paid as increments is premature as no such situation would be present unless the arbitrator upholds the grievance and also directs that the step increments be paid. In addition, it is possible that an interest arbitration award could affect whether the grievance would need to be resolved.