

P.E.R.C. NO. 2023-21

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (STATE POLICE),

Petitioner,

-and-

Docket No. SN-2022-034

STATE TROOPERS FRATERNAL ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies, in part, and grants, in part, the State's request for a restraint of binding arbitration of the STFA's grievance. The grievance alleged the State violated the parties' CNA by failing to make the grievant whole in back pay and benefits following the grievant's suspension pending disciplinary charges, which were ultimately dismissed in their entirety. The Commission finds that N.J.S.A. 53:1-10 and N.J.A.C. 4A:2-2.10(d)(3) do not preempt arbitration of the STFA's grievance. The Commission concludes due to the issue of the grievant's discipline is resolved, arbitration over the compensation issue would not significantly interfere with Superintendent's authority over discipline of the state police. However, the Commission grants the State's request to restrain arbitration to the extent that the STFA's grievance is seeking pension contributions as pension-related issues are not mandatorily negotiable nor legally arbitrable.

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, Matthew J. Platkin, Acting Attorney General of New Jersey (Eric A. Zimmerman, Deputy Attorney General, on the brief)

For the Respondent, The Law Offices of Lauren Sandy, LLC, attorneys (Lauren Sandy, of counsel)

DECISION

On March 2, 2022, the State of New Jersey, State Police (State) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the State Troopers Fraternal Association (STFA). The grievance asserts that the State violated the parties' collective negotiations agreement (CNA) by failing to make the grievant whole in back pay and benefits following the grievant's suspension pending disciplinary charges, which were ultimately dismissed in their entirety.

The State filed briefs and exhibits. The STFA filed a brief.<sup>1/</sup> These facts appear.

The STFA represents all Troopers in the Division of State Police excluding Sergeants, Lieutenants, Captains, Majors, Lieutenant Colonels, and the Colonel. The State and STFA are parties to a collective negotiations agreement (CNA), however, the CNA applicable to the instant grievance was in effect from July 1, 2017 through June 30, 2019. The grievance procedure ends in binding arbitration.<sup>2/</sup>

The Grievant was suspended without pay on or about August 25, 2017, pending administrative disciplinary charges. He was returned to work on or about January 21, 2018. On September 11, 2018, the Attorney General's Office sent correspondence to the Administrative Law Judge assigned to the Grievant's General Disciplinary Hearing withdrawing the State's administrative appeal and confirming that the disciplinary charges were dismissed and the case is closed.

On May 28, 2019, the STFA filed a grievance stating:

Grieve the loss incurred by [Grievant] during the period of time between August 25, 2017

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1/ Neither party filed a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

2/ Article XII(3), "Grievance Procedure", states, "These procedures are not applicable to matters relating to removal or disciplinary action resulting from hearings pursuant to the Rules and Regulations."

through January 21, 2018, in which he was improperly suspended pending disciplinary charges that were ultimately found to be unsubstantiated and dismissed in their entirety. The losses suffered are included but not limited to the loss of pay (Article X, Section B1 through B9 including Appendix A and B), loss of Holidays including Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day (Article VI, Section B(1)).

This is arbitrary, capricious, and violative of the existing agreement between the State of New Jersey and the State Troopers Fraternal Association, specifically, Article VI "Time Off", Article X "Salary, Maintenance, and Fringe Benefits, Article XVI, "Complete Agreement", and Article XXVII "Non-Discrimination."

RELIEF SOUGHT: [The Grievant] be made whole in back pay and benefits, including but not limited to employer required pension contributions, the above listed Holidays be restored to his time compensation book, and removal of information regarding the allegations and findings in his personnel file.

On May 28, 2021, the State issued a Phase 2 determination partially denying the grievance. In response to the STFA's request for back pay and benefits, the State, citing N.J.A.C. 4A:2-2.10(d)(3), denied the grievance because the Grievant provided information to the Payroll Unit that showed he earned in excess of what his normal earnings would have been during the period of his suspension, inclusive of Holiday pay. In response to the STFA's request for "employer required pension

contributions," the State denied the grievance because the Department of Treasury, New Jersey Division of Pension and Benefits, who regulates the State Police Retirement System (SPRS), issued a determination regarding the member's eligibility to apply for the purchase of lost time. The Grievant was ineligible because he had up to a year from his return to duty to apply, which was from January 2018 to 2019, and he did not submit his application until December 3, 2020. The Superintendent granted the grievance's request to remove all references to the suspension from the Grievant's personnel file and he was reimbursed 36 hours of lost Vacation time.<sup>3/</sup>

Following the State's denial of the grievance, the STFA filed a request for a Submission of a Panel of Arbitrators on June 2, 2021, which identified the grievance to be arbitrated as "failure to properly compensate/provide benefits for [the Grievant]." This petition ensued.

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

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<sup>3/</sup> The issues of the removal of disciplinary documents and lost vacation time are not before us as the STFA does not address these issues in its brief.

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.

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, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

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.

Arbitration is permitted if the subject of the grievance 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 (¶1111 App. Div. 1983). Thus, if a grievance is either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Where a statute or regulation addresses a term and condition of employment, negotiations are preempted only if it speaks in the imperative and fixes a term and condition of employment expressly, specifically and comprehensively. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The State argues that arbitration of the STFA's grievance should be restrained because it is preempted by N.J.A.C. 4A:2-2.10(d)(3), supra, which provides that when a suspension is reversed, any award of back pay is reduced by the amount of money actually earned during the suspension. The State asserts that it fully complied with that regulation when reinstating the Grievant. The State further argues that the Grievant's request for employer required pension contributions is within the

jurisdiction of the State Police Retirement System Board (SPRSB), and it is therefore non-arbitrable. The State asserts that the Grievant filed an untimely application for the pension benefits pursuant to the rules of SPRSB and then failed to appeal the denial of those pension benefits by the SPRSB. Lastly, the State argues that the CNA does not allow for back pay awards or employer provided pension contributions upon reinstatement from a modified or reversed suspension.

The STFA argues that arbitration of its grievance should not be restrained because it concerns the mandatorily negotiable subject of compensation and benefits where disciplinary charges against the Grievant were withdrawn. The SFTA asserts that the Civil Service regulations relied upon by the State do not preempt arbitration because they do not apply to the State Police, who are not subject to the Civil Service Commission's rules and regulations regarding disciplinary matters. Rather, the STFA asserts that disciplinary matters regarding the State Police are controlled by the Superintendent pursuant to N.J.S.A. 53:1-10.

In its reply brief, the State responds that N.J.S.A. 53:1-10 provides the Superintendent of the State Police plenary authority over disciplinary matters, including back pay mitigation, and therefore, the STFA's grievance is non-arbitrable. The State reiterates its argument that the issue over the Grievant's pension benefits is within the jurisdiction SPRSB and it is



statutorily preempted by the rules and regulations of the Division of Pension and Benefits. The State further argues that the entire subject of public employee pensions is non-negotiable.

"It is well settled that absent preemption, compensation is a mandatorily negotiable term and condition of employment." City of Newark, P.E.R.C. No. 2013-77, 39 NJPER 493 (¶156 2013) and P.E.R.C. No. 2014-44, 40 NJPER 427 (¶145 2013) (both cases declined to restrain arbitration of grievances alleging failure to provide back pay for reinstated employees who were improperly laid off, holding that compensation is mandatorily negotiable and that Civil Service regulations did not preempt an award of back pay.)

The State asserts that N.J.S.A. 53:1-10 and N.J.A.C. 4A:2-2.10(d)(3) preempt the STFA's grievance. N.J.S.A. 53:1-10 provides:

The superintendent shall, with the approval of the governor, make all rules and regulations for the discipline and control of the state police, and provide the necessary preliminary and subsequent instruction to the troopers in their duties as police officers.

This statute concerns the Superintendent's authority over discipline of the State Police and does not preempt arbitration of the STFA's grievance. The Attorney General's office dismissed the charges against the Grievant on September 11, 2018; therefore the Grievant's discipline has been fully resolved. The grievance is solely challenging the issue of the compensation owed to the

Grievant, if any, during the period of his suspension. Thus, we find, given that the issue of the grievant's discipline is resolved, arbitration over the compensation issue would not significantly interfere with the Superintendent's authority over discipline of the state police set forth in N.J.S.A. 53:1-10.

N.J.A.C. 4A:2-2.10(d)(3) provides:

Where a removal or a suspension for more than 30 working days has been reversed or modified or an indefinite suspension pending the disposition of criminal charges has been reversed, and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make reasonable efforts to find suitable employment during the period of separation, the employee shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

In State Troopers Fraternal Assn. v. State, 62 N.J. 302 (1973), the Court found that "[w]e are satisfied beyond any doubt that the Legislature in 1921 intended the members of the State Police to be in the unclassified service." N.J.A.C. 4A:2.10(d)(3) applies to permanent employees in the career service and thus does not appear to apply to State Troopers. N.J.A.C. 4A:2-2.1(a). Nonetheless, even if this Civil Service regulation were applicable, it does not "expressly, specifically, or comprehensively" preempt the issue of whether the Grievant may be owed compensation for the period of his suspension. Bethlehem, supra. The State's assertions that it properly complied with Civil Service regulations in denying back pay or that the

parties' CNA omits any reference to back pay for a reversed suspension are issues for an arbitrator to determine. See Ridgefield Park, supra. Accordingly, we find that the STFA's grievance seeking back pay for the Grievant's period of suspension is legally arbitrable.

However, to the extent that the STFA's grievance is seeking pension contributions for the Grievant's period of suspension, pension-related issues are "sacrosanct" and not mandatorily negotiable or legally arbitrable.<sup>4/</sup> State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 83 (1978); see also N.J.S.A. 34:13A-8.1.

For all the foregoing reasons, we find that to the extent that the STFA's grievance concerns back pay for the grievant's period of suspension, it is legally arbitrable. However, to the extent the PBA's grievance seeks pension contributions, it is not legally arbitrable.

#### ORDER

The request of the State of New Jersey (State Police) for a restraint of binding arbitration is denied to the extent the grievance seeks compensation for the Grievant's period of suspension, but is granted to the extent the grievance is seeking pension contributions.

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<sup>4/</sup> This issue may be raised in another forum, such as filing a claim with the State Police Retirement Board.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Papero voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: December 15, 2022

Trenton, New Jersey