

P.E.R.C. NO. 2024-8

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 29,

Petitioner,

-and-

Docket No. SN-2023-041

TOWNSHIP OF IRVINGTON,

Respondent.

Appearances:

For the Petitioner, Trimboli & Prusinowski, LLC,  
attorneys (James T. Prusinowski, of counsel)

For the Respondent, Florio, Perrucci, Steinhardt,  
Cappelli, Tipton & Taylor, LLC, attorneys (Lester E.  
Taylor, III, of counsel; Robert K. Devaney, on the  
brief)

SYNOPSIS

The Commission denies the petition of PBA Local 29 for a restraint of binding arbitration of its grievance challenging the Township of Irvington's reliance on a provision of the parties' collective negotiations agreement (CNA) to unilaterally deduct money from the final paycheck of PBA members who resigned within five years after their start date, to recoup training costs expended by the Township. The PBA seeks a determination that the CNA provision is preempted by a statute, N.J.S.A. 40A:14-178, and therefore unenforceable. The Commission finds that the issue of training-cost reimbursement is mandatorily negotiable unless preempted, and that the statute does not do so, as it provides no means for reimbursement when an officer resigns after two years and/or is not re-hired by another law enforcement agency, and is also silent as to whether reimbursement is limited solely to the conditions specified in the statute.

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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DECISION

On May 1, 2023, PBA Local 29 (PBA) filed a scope of negotiations petition seeking a restraint of binding arbitration of its grievance challenging the Township of Irvington's (Township) reliance on Article XXII, §17 of the parties' collective negotiations agreement (CNA) to unilaterally deduct money from the final paycheck of PBA members who resigned within five years after their start date in order for the Township to recoup costs expended for police academy training. The PBA asserts that the deductions are impermissible, and seeks a

determination that the relied upon contract provision is preempted by N.J.S.A. 40A:14-178, and therefore unenforceable.<sup>1/</sup>

The PBA filed a brief, exhibits, and the certification of its counsel, James T. Prusinowski. The Township filed a brief, exhibits, and the certification of its counsel, Robert K. Devaney. These facts appear.

The PBA represents all full-time police officers employed by the Township, but excluding Superior Officers (Sergeants, Lieutenants, Captains, Deputy Chiefs, the Chief and Director), and all other employees (including confidential, craft and clerical employees). The Township and PBA are parties' to a CNA in effect from January 1, 2017 through December 2022. A Memorandum of Agreement was signed by the parties for a successor agreement, which is pending ratification. The grievance procedure, at Article VII of the CNA, ends in binding arbitration and defines "grievance" as a claimed "misinterpretation, misapplication, or an alleged violation of policies or administrative decisions affecting terms and conditions of employment or of any of the [CNA's] provisions".

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<sup>1/</sup> The grievance also alleges the deductions violate provisions of New Jersey's wage and hour law and regulations. In its brief in support of its scope petition, the PBA raised this issue only in its "Summary of the Case." As the PBA raised this issue but did not provide legal argument, we will not address it.

Article XXII of the CNA, entitled "Miscellaneous," §17 provides in pertinent part:

The parties agree that any officer hired on or after October 1, 2017 shall be required to remain employed with the Township of Irvington as a Police Officer for a period of no less than five (5) full years. Failure to be employed by the Township upon the completion of the 365<sup>th</sup> day in the 5<sup>th</sup> year of employment shall result in the officer being required to return all training fees paid on behalf of the employee. Such fees include, but are not limited to, the academy, workshops and other such trainings, and the officer shall be required to reimburse the Township for all payments made to the officer and/or on the officer's behalf for uniforms and equipment.

On December 14, 2022, the PBA filed a step 5 grievance with the Township's Business Administrator, alleging "improper and illegal deductions" were taken from the paychecks of seven former Township police officers to recover the cost of their training. According to dates provided in the PBA's certification, three of these former officers began their employment with the Township on the same date in 2018, three started on different dates in 2019, and the seventh started in 2021. The longest term of employment spanned four years and four months, while the shortest was nine months, 29 days. The others were not less than two years each. The PBA certifies that the Township deducted money from the final paycheck of each officer for academy training, uniforms and equipment, totaling approximately \$3,500 for each officer,

relying on Article XXII, §17 of the parties' CNA. The PBA further certifies the Township notified at least one officer that it would be withholding his compensatory time, vacation time, and other payouts for 60 days subsequent to his resignation, with such money to be used towards his training, equipment and uniform. On January 18, 2023, the PBA filed a request for submission of a panel of arbitrators. This petition ensued.

In a scope of negotiations determination, the Commission's 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 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.

Thus, we do not consider the contractual 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, 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 (¶111 App. Div. 1983). Thus, if a subject is either mandatorily or permissively negotiable, then an arbitrator can

consider a contractual provision on that subject in determining whether a related 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).

Statutory or regulatory provisions which speak in the imperative and leave nothing to the discretion of the public employer may not be contravened by negotiated agreement. *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 PBA asserts that Article XXII, §17 of the CNA, which provides that an officer's service of less than five years with the Township will "result in the officer being required to return all training fees paid on behalf of the employee," is preempted by sections (a) and (b) of N.J.S.A. 40A:14-178, which state in full:

a. Whenever a person who resigned as a member of a county or municipal law enforcement agency is appointed to another county or municipal law enforcement agency, the police department of an educational institution pursuant to P.L. 1970, c. 211 (C. 18A:6-4.2 et seq.), a State law enforcement agency or the New Jersey Transit Police Department

pursuant to section 2 of P.L. 1989, c. 291 (C. 27:25-15.1) within 120 days of resignation, and that person held a probationary appointment at the time of resignation or held a permanent appointment for 30 days or less prior to resignation, the county or municipal law enforcement agency, educational institution or State law enforcement agency appointing the person, or the New Jersey Transit Corporation, is liable to the former county or municipal employer, as appropriate, for the total certified costs incurred by the former employer in the examination, hiring, and training of the person.

b. Whenever a person who resigned as a member of a county or municipal law enforcement agency is appointed to another county or municipal law enforcement agency, the police department of an educational institution pursuant to P.L. 1970, c. 211 (C. 18A:6-4.2 et seq.), State law enforcement agency or the New Jersey Transit Police Department pursuant to section 2 of P.L. 1989, c. 291 (C. 27:25-15.1) within 120 days of resignation, and that person, at the time of resignation held a permanent appointment for more than 30 days but less than two years, the county or municipal law enforcement agency, educational institution, or State law enforcement agency appointing the person, or the New Jersey Transit Corporation, is liable to the former county or municipal employer, as appropriate, for one-half of the total certified costs incurred by the former employer in the examination, hiring and training of that person.

[N.J.S.A. 40A:14-178(a-b) (emphases added).]

The statute, enacted in 1987, further requires the appointing agency to "notify the former employer immediately upon the appointment of a former employee and . . . reimburse the former



employer within 120 days of the receipt of the certified costs.”  
N.J.S.A. 40A:14-178(c).

The PBA asserts that the Township deducted money for training costs from each of the affected officers' final paychecks “irrespective of whether” they “continued to be police officers with another New Jersey entity or left law enforcement altogether.” The PBA argues that N.J.S.A. 40A:14-178 provides the “exclusive remedy” for municipalities seeking reimbursement of training costs when police officers leave their employ. It argues that, under the statute, reimbursement may be obtained only from the new employing agency, not the individual, and “no reimbursement is permitted” if an officer works more than two years with the original agency or resigns and does not get another law enforcement position. The PBA contends that the Township had no authority to negotiate or implement a contractual provision which provides greater benefits than the statute.

The PBA next argues, citing a case decided under principles of contract law, that the reimbursement provision constitutes an impermissible penalty that cannot be maintained in a contract because, among other things, the Township cannot show that reimbursement for the full training cost is a reasonable assessment of the harm it has suffered as a result of the resignations.

The Township responds that N.J.S.A. 40A:14-178 does not preempt Article XXII, §17 of the CNA, because the law does not state that a municipality may only recoup training costs from a succeeding law enforcement agency, nor does it forbid recouping costs by other means. The Township further denies that the CNA's reimbursement provision is an unenforceable penalty clause.

Absent preemption, compensation issues are generally mandatorily negotiable, and a requirement to repay training costs effectively reduces an employee's compensation. In a case the PBA seeks, unsuccessfully, to distinguish from the present matter, New Jersey Transit Auth. v. New Jersey Transit PBA, Local 304, 314 N.J. Super. 129 (App Div. 1998), the Appellate Division affirmed our decision, P.E.R.C. No. 97-125, 23 NJPER 298 (¶28137 1997), that found the employer violated our Act when it unilaterally imposed, as a condition of employment, a training-cost reimbursement requirement on N.J. Transit police officers if they left employment within two years. In particular, we found that while a public employer has a managerial prerogative to determine the training needs of its police force, the cost of training and compensation during training are severable and mandatorily negotiable issues; and that the reimbursement requirement was "quite literally a term and condition of

employment . . . [that] intimately and directly concerns the duration of employment". 23 NJPER at 299.

In affirming our decision, the Appellate Division observed, "it is well-established that employees may negotiate the costs connected with training without significantly impinging on the managerial prerogative[, and] . . . that employees may negotiate over whether they will be compensated during training, how much compensation they will receive, and whether their compensation will be effectively reduced by having training costs imposed on them." New Jersey Transit., 314 N.J. Super. at 138, citing, e.g., Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Borough of Avalon, P.E.R.C. No. 93-105, 19 NJPER 270 (¶24135 1993); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987; Franklin Tp., P.E.R.C. No. 86-83, 12 NJPER 98 (¶17037 1985); City of Newark, P.E.R.C. No. 80-52, 11 NJPER 703 (¶16242 1985); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985).

We find this court and Commission precedent to be fully applicable to the matter at hand. It is clear that the training-cost reimbursement provision at issue in this matter is mandatorily negotiable, unless negotiation over that subject is preempted. We find that N.J.S.A. 40A:14-178 does not do so. The statute provides no means for reimbursement when an officer

resigns after two years and/or is not re-hired by another law enforcement agency. It is also silent as to whether reimbursement is limited solely to the conditions specified in the statute. Early legislative statements about the statute, quoted by the PBA, are likewise silent on these subjects and, as the PBA acknowledges in its brief, no court to date has assigned preemptive effect to it. On this record, we find no reason to conclude the statute speaks in the imperative, exclusively fixes the terms of training-cost reimbursement expressly, specifically and comprehensively, and leaves employers with no discretion to negotiate reimbursement terms that are not expressly covered by the law.<sup>2/</sup>

Additionally, we note that the statute's actual applicability is questionable. The record does not reflect if any of the grievants were appointed to another law enforcement agency within 120 days of resigning from their Township positions. Moreover, only one of the grievants (who resigned after nine months of service with the Township) would fall within

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<sup>2/</sup> For the same reasons, we are not persuaded by the PBA's argument that today negotiations over the training-cost reimbursement provision in New Jersey Transit, supra, would be preempted by N.J.S.A. 27:25-15.1b, a law enacted in 2021 that established training-cost reimbursement parameters regarding N.J. Transit police officers identical to those applicable to counties and municipalities under N.J.S.A. 40A:14-178.

the statute's length of service parameters. Finally, the PBA's other argument, that Article XXII, §17 of the CNA is a "penalty clause" imposing a reimbursement burden on the affected officers that is not reasonably related to the actual costs or harm incurred by the Township, relates to the merits of the grievance, and is outside of our scope of negotiations jurisdiction. Ridgefield Park. That issue may be raised to the arbitrator.

ORDER

The request of PBA Local 29 for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: September 28, 2023

Trenton, New Jersey