

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BRIGANTINE,

Petitioner,

-and-

Docket No. SN-82-105

POLICE BENEVOLENT ASSOCIATION,  
LOCAL NO. 204,

Respondent.

SYNOPSIS

A Commission Designee temporarily restrains an arbitration proceeding, pending a full Commission decision, between Local No. 204 of the PBA and the City of Brigantine. It was found that the arbitration grew out of a demotion of eleven police supervisory personnel. The City claimed that this action was taken for reasons of economy pursuant to N.J.S.A. 40A:14-143. The Designee ruled that actions taken under this statute are not arbitrable pursuant to PBA Elizabeth, Local No. 4 v. City of Elizabeth, 146 N.J. Super. 257 (App. Div.).

Further, there is a civil action pending which was brought by the individuals who were demoted which contested the City's action.

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Appearances:

For for Petitioner  
Sills, Beck, Cummis, Zuckerman, Radin & Tischman, Esqs.  
(Stephen H. Joseph, Esq.)

For the Respondent  
William O'Brien and Michael Burns, Pro Se

INTERLOCUTORY DECISION

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (hereinafter the "Commission") on April 27, 1982 by the City of Brigantine (hereinafter the "Petitioner") seeking a determination as to whether certain matters in dispute between the Petitioner and PBA Local 204 (hereinafter the "PBA") are within the scope of negotiations. The Petition was accompanied by an Order to Show Cause why an order should not be made staying the arbitration pending the final decision on the City of Brigantine's Scope of Negotiations Determination Petition.

The Order was made returnable on July 7 by the undersigned.

Both parties submitted briefs and on the return date were given an opportunity to make oral arguments.

The demand for arbitration concerns certain action taken by the City which the PBA claims are violative of the existing collective negotiations contract.

By resolution of the Board of Commissioners dated September 16, 1981, the City demoted eleven police supervisory personnel. It was claimed that this action was taken for reasons of economy and was lawful pursuant to N.J.S.A. 40A:14-143 which provides,

The governing body of any municipality, if they shall deem it necessary for reasons of economy, may decrease the number of members and officers of the police department or force or their grades or ranks. In case of demotion from the higher ranks, the officers or members to be so demoted shall be in the inverse order of their appointment. When the service of members or officers is terminated, such termination shall be in the inverse order of their appointment. Any member or officer who is demoted or whose service is terminated by reason of such decrease shall be placed on a special employment list, and in the case of subsequent promotions, a person so demoted shall be reinstated to his original rank and in the case of termination of service and new appointment, prior consideration shall be given to the persons on said special employment list.

The PBA filed a grievance on September 20, 1981 claiming that the action of the City violated the contract and the above-stated reason of economy was only pretextual.

Also on September 17, 1981 the eleven demoted police officers filed a Complaint in Lieu of Prerogative Writ in the Superior Court of New Jersey, Law Division Docket No. L-3970 81EPIN. in which the officers allege that the demotions were not made for "reasons of economy."


On December 30, 1981, the City promoted three of the formerly demoted police. They claimed this was done pursuant to the special employment list required by N.J.S.A. 14A:14-143.

On January 10, 1982, the PBA filed a second grievance against the City charging that the City violated the collective negotiations contract between the parties in the selection of the three officers who were reinstated.

On March 23, 1982, the PBA sought to bring its two grievances to arbitration (Docket No. AR-82-297).

The City's argument here that this matter is not arbitrable is sufficiently persuasive to the undersigned to grant a stay. Both grievances are related to the interpretation of N.J.S.A. 40A:14-143 and in Patrolmen's Benevolent Assoc. Elizabeth Local No. 4 v. City of Elizabeth, 146 N.J.Super. 257 (App. Div. 1976), the court held that the interpretation of this statute "involves a plain statutory managerial and non-negotiable authority of the municipality." Since the matter is non-negotiable it therefore follows that there is a substantial likelihood the Commission will find that this matter is non-arbitrable. The first grievance is also the subject of the court action which, under PBA Local 4, supra, is the appropriate forum for such an action and according to counsel for the City the facts of the second grievance are now in issue in the court action.

Accordingly, arbitration AR-82-297 is hereby restrained pending the Commission decision on the City's Scope of Negotiations Petition SN-82-105.

  
Edmund G. Gerber  
Commission Designee

Dated: July 15, 1982  
Trenton, New Jersey