

P.E.R.C. NO. 92-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RUTHERFORD,

Petitioner,

-and-

Docket No. SN-92-53

RUTHERFORD PBA LOCAL 300,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Rutherford PBA Local 300 against the Borough of Rutherford. The grievance contests the assignment of a sergeant rather than a lieutenant to the position of traffic coordinator. It seeks the pay of the higher rank for the sergeant assigned. The Commission finds that the Borough could have lawfully agreed to compensate police for work performed in a higher rank.

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Appearances:

For the Petitioner, DeMaria, Ellis, Hunt, Salsberg & Friedman, attorneys (Brian Flynn, of counsel; Brian Flynn and Andrew B. Brown, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys (Leon B. Savetsky, of counsel)

DECISION AND ORDER

On November 14, 1991, the Borough of Rutherford petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Rutherford PBA Local 300. The grievance contests the assignment of a sergeant rather than a lieutenant to the position of traffic coordinator. It seeks the pay of the higher rank for the sergeant assigned.

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

The PBA represents the Borough's police officers below the rank of captain. The parties entered into a collective negotiations agreement effective from January 1, 1989 to December 31, 1990. The

grievance procedure ends in binding arbitration. The parties are currently involved in interest arbitration proceedings to resolve the terms of a successor agreement. None of the issues in the interest arbitration will affect the grievance.

Chapter 76 of the Rutherford Municipal Code establishes the police department. Section 76-1 provides that the department shall have a chief, two captains, seven lieutenants, five sergeants and the number of patrol officers deemed necessary by the mayor and council. The duties of the ranks are set forth in the Department Rules and Regulations which are incorporated into the collective negotiations agreement.

In 1975, an internal directive of the chief established an assignment called traffic coordinator. The coordinator is not a line supervisor of other officers, but is a staff position made necessary by the volume of traffic and traffic-related problems in the Borough. The coordinator is responsible for school marshalls, traffic and highway surveys, and grants as well as training department members in the use of radar units, investigating traffic and parking-related complaints of citizens, reviewing accident reports, and proposing ordinances related to traffic issues.

Before 1975, Sergeant Mazzaro performed the traffic coordinator duties. In 1975, when the coordinator position was officially established, Mazzaro, who had since been appointed lieutenant, was assigned to it. In April 1979, Mazzaro was replaced by Sergeant Walker. The PBA did not grieve that assignment.

In May 1982, Lieutenant Mazzaro was reassigned the coordinator duties. In January 1985, Mazzaro retired and the duties were assigned to Lieutenant Najawko.

Before 1989, the police department worked rotating shifts requiring nine patrol squads. Five lieutenants were able to supervised the nine squads. One lieutenant was assigned to head the detective bureau and Lieutenant Najawko was assigned as traffic coordinator.

In 1989, the department changed to steady shifts. Nine squads remained. Day and afternoon shifts were staffed by two lieutenants and one sergeant each; the midnight shift by one lieutenant and two sergeants. One lieutenant headed the detective bureau and Lieutenant Najawko was assigned as traffic coordinator.

In December 1990, Najawko retired. The Borough decided to assign six lieutenants to the patrol division and one to the detective bureau. The second sergeant on the midnight shift was re-deployed and a sergeant assumed the traffic coordinator duties.

On July 18, 1991, the PBA filed a grievance alleging that the Borough violated contract provisions on "Work in Higher Duties" and "Job Descriptions" when it assigned a sergeant to the coordinator duties. Article 24, Work in Higher Rank, provides:

1. When an Employee works in a higher rank for thirty (30) days or more, he shall receive the pay of that higher rank in which he is working and the Borough shall not defeat the intent of this clause by shifting two (2) or more Employees to cover the higher rank in question. This clause shall not apply in cases of vacancies due to vacations.

2. After an Employee works in a higher rank for thirty (30) days or more, he shall thereafter receive the pay of such higher rank for the remaining period of time during which he performs the work of such higher rank.

3. For purposes of the Article the thirty (30) days must be worked within a calendar year, however, these days need not be consecutive.

Article 14, Job Descriptions, states that the job description for each rank shall be as described in the department's rules and regulations and the 1965 Civil Service Reclassification Survey for the Borough. The grievance claims that the traffic coordinator position requires a lieutenant and that the sergeant assigned as coordinator should receive lieutenant's pay. The Borough denied the grievance and the PBA demanded binding 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]

We cannot consider the merits of the grievance or any contractual defenses.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.^{1/} The Court stated:

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. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be 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 App. Div. Dkt. No. A-3664-81T3

^{1/} The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

(4/28/83). Since there is no statute or regulation which preempts negotiations, we need only decide whether the agreement alleged would substantially limit government's policymaking powers.

The PBA does not dispute the Borough's ability to determine whether the traffic coordinator position should be filled or who should fill it. PBA brief at 3. It claims instead that, except for one brief exception, the coordinator position has been filled by a lieutenant and that the position fits within the job description of lieutenant, not sergeant. It does not contest the assignment of the duties to a sergeant, but it seeks lieutenant's pay for the sergeant assigned.

Additional pay for work performed in a higher rank is mandatorily negotiable. Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), app. pending App. Div. Dkt. No. A-1434-91T2; S. Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); City of Paterson, P.E.R.C. No. 84-113, 10 NJPER 257 (¶15123 1984); cf. East Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990). Cases protecting an employer's right to determine its organizational structure do not govern in this instance. Those cases do not address the issue presented here: could the Borough have lawfully agreed to compensate police for work performed in a higher rank? We find that such an agreement would not substantially limit the Borough's policymaking powers and therefore decline to restrain binding arbitration. We emphasize that the arbitrator, not us, must determine whether the work being

performed is lieutenant's work and, if so, whether the contract entitles the sergeant performing that work to greater compensation.

ORDER

The request of the Borough of Rutherford for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. Commissioner Goetting voted against this decision.

DATED: January 30, 1992
Trenton, New Jersey
ISSUED: January 31, 1992