

P.E.R.C. NO. 97-101

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Petitioner,

-and-

Docket No. SN-97-10

PBA LOCAL NO. 38,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Township of Woodbridge for a restraint of binding arbitration of a grievance filed by PBA Local No. 38. The grievance protests the denial of a sergeant's request for compensatory time off and, as filed, sought specific remedies, including rescission of an order requiring that division commanders rather than shift commanders approve requests for time off. The restraint is granted except to the extent, if any, the grievance seeks compensation for time off that was unreasonably denied.

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, Genova, Burns, Trimboli & Vernoia,  
attorneys (James J. Gillespie, of counsel)

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

DECISION AND ORDER

On August 9, 1996, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by PBA Local No. 38. The grievance protests the denial of a sergeant's request for compensatory time off and, as filed, seeks specific remedies, including rescission of an order requiring that division commanders rather than shift commanders approve requests for time off.

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

Until a May 31, 1996 decision by the Director of Representation, the PBA represented both superior and

rank-and-file officers.<sup>1/</sup> The Township and the PBA entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1995. The agreement's grievance procedure ends in binding arbitration.

On January 11, 1996, the Police Chief issued General Order #181. That order transferred authority to grant requests for time off from shift commanders to division commanders.

On January 16, 1996, Sergeant David Whitaker's division commander denied his request to use two hours of accumulated time or "time coming" ("T.C.") at the end of his shift. On January 21, Whitaker sent a memorandum to his PBA representative requesting that he process a grievance protesting this denial. The PBA submitted the sergeant's memorandum as the grievance. The memorandum alleged that the division commander had not given any reason for denying the request and concluded with a demand for these remedies: (1) a change to a policy allowing shift commanders to approve time off when division commanders are not working; (2) an apology from the division commander who denied his request; and (3) placement of a letter of reprimand in the division commander's file for "failing to accept his responsibility with regard to General Order #181."

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<sup>1/</sup> The Director's decision in Woodbridge Tp., D.R. No. 96-19, 22 NJPER 216 (¶27116 1996), granted the Township's petition to remove the superior officers from the PBA unit and, pursuant to a representation petition filed by the Woodbridge Township Superior Officers' Association, directed that an election be held among sergeants, lieutenants and captains. Since the contract had already expired by the date of the decision, the removal was effective immediately. See In re Clearview Reg. Bd. of Ed., D.R. No. 78-2, 2 NJPER 248 (1977).

The chief and the Township denied the grievance, and the PBA demanded arbitration. The demand for arbitration identified the nature of the grievance as "denial of request for time off (T.C.)." 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]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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]

We will not restrain arbitration unless the agreement alleged is preempted or would substantially limit government's policymaking powers. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983).

The Township maintains that arbitration should be restrained because an arbitrator lacks legal authority to grant the remedies sought in the January 21 memorandum. It also maintains that the grievance cannot be recast as one seeking a non-specified remedy for the denial of time off. The Township also argues that an arbitrator cannot grant compensatory time off or award two hours of additional pay (possible remedies suggested by the PBA) because Whitaker is no longer a member of the unit covered by the PBA contract; but it does not argue that the grievance is non-arbitrable due to the grievant's separation from the unit.

The PBA acknowledges that "an arbitrator has no authority to effect any of the measures which the individual grievant requests...." However, it maintains that the underlying issue is

the allegedly improper denial of compensatory time. It characterizes the grievant's memorandum as an inartful document composed by a layperson. It argues that an arbitrator has broad authority to fashion a remedy.

In light of the PBA's representations, we restrain arbitration over the claims in the original grievance. We consider that the PBA now seeks to arbitrate only the denial of compensatory time.

The Township accepts that grievances over requests for time off may be legally arbitrated. See Borough of Bradley Beach, P.E.R.C. NO. 90-60, 16 NJPER 43 (¶21020 1989) (grievance arbitrable to the extent it alleged that denial of vacation requests were unreasonable given staffing levels); Borough of Garwood, P.E.R.C. No. 90-50, 16 NJPER 11 (¶21006 1989) (where minimum staffing levels were not implicated, arbitrator could determine whether officer's request to take leave on a holiday was unreasonably denied). Accordingly, we will not restrain arbitration over the grievance to the extent, if any, it seeks compensation for time off that was unreasonably denied.

The Township nevertheless asserts that we should restrain arbitration because the compensation claim was not properly raised in the early stages of the grievance procedure. Whether a grievance or demand for arbitration was properly processed to arbitration is a contractual arbitrability question to be decided by the arbitrator rather than the Commission. The Commission's jurisdiction in a scope proceeding is limited to determining whether the subject of a


claim is mandatorily negotiable and therefore is legally arbitrable. The failure to comply with contractual grievance procedures does not provide a basis for restraining arbitration on negotiability grounds. See Ridgefield Park; Borough of Rutherford, P.E.R.C. No. 97-47, 22 NJPER 400 (¶27218 1996); Neptune Tp. Bd. of Ed., P.E.R.C. No. 93-36, 19 NJPER 2 (¶24001 1992).

Finally, Willingboro Bd. of Ed., I.R. No. 85-9, 11 NJPER 72 (¶16035 1985) does not defeat a claim for compensatory time arising when the grievant was still in the PBA's negotiations unit. In that case, a Commission designee restrained an arbitrator from issuing an award which would change the grievant's workday or award him additional compensation for any period of time after he had been removed from the unit. By logical implication, Willingboro allowed such a remedy for periods before that removal.

ORDER

The request of the Township of Woodbridge for a restraint of binding arbitration is granted except to the extent, if any, the grievance seeks compensation for time off that was unreasonably denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: February 27, 1997  
Trenton, New Jersey  
ISSUED: February 28, 1997