

P.E.R.C. NO. 80-160

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-80-93

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Chairman denies the request of the City for a permanent restraint of arbitration. The matter arose when two police officers were transferred, allegedly in violation of the parties' contract. The subject of employee transfers is a permissive subject of negotiations in units involving police and fire department employees and disputes relating to such subjects can be submitted to arbitration. See In re Paterson Police PBA Local No. 1, ___ N.J. Super. ___ (App. Div. Docket No. A-257-79, 7/10/80).

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Appearances:

For the Petitioner, Louis P. Caroselli, Corporation
Counsel
(William C. Gerrity, Assistant Corporation
Counsel, on the brief)

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(David Solomon, of Counsel)

DECISION AND ORDER

On February 14, 1980, the City of Jersey City ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination of the negotiability/arbitrability of a matter in dispute with the Jersey City Police Officers Benevolent Association ("POBA"). A brief was filed by the City in support of its petition, which seeks a permanent restraint of arbitration of a grievance which the POBA seeks to process pursuant to the grievance procedure in the parties' collectively negotiated agreement.

After a conference conducted by the Special Assistant to the Chairman of the Commission, at which both parties were present, the City agreed to allow the grievance to proceed to arbitration, preserving its right to contest the negotiability and arbitrability of the subject matter involved.

The grievance in dispute relates to the transfer on January 22, 1979 of two police officers represented by the POBA, to different police districts.^{1/} The City contends that the matter is non-negotiable and non-arbitrable as one of its inherent powers necessary "for the effective management of the police department and the safety and welfare of the citizens" of the City.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated the Chairman the authority to issue scope of negotiations decisions when the negotiability of the issue(s) in dispute has been previously determined by the Commission and/or the judiciary.

In Ridgefield Park Ed. Ass'n v. Ridgefield Park Board of Ed., 78 N.J. 144 (1978) the Supreme Court agreed with the Commission's determination that teacher transfers and reassignments were not mandatorily negotiable terms and conditions of employment. 78 N.J. at 156. Thus we agree with the City that its decision to transfer the two officers did not relate to a required subject for negotiations. However, because this dispute arises with respect to police employees the grievances may be susceptible of arbitration if they relate to a permissive subject of negotiations. The Court, in Ridgefield Park, supra, recognized that the legislature in enacting N.J.S.A. 34:13A-16(f)(4) had authorized permissive negotiations for police and fire employees, 78 N.J. at 158, although it held that no such

^{1/} By way of background, the City in its brief has set forth at length the service records of the two police officers including various disciplinary actions taken against them for infringement of department regulations. However, there is no allegation by the City, nor does its statement of facts indicate that the instant transfers were the direct result of a disciplinary proceeding in either case. The City in its petition states that the transfers were based upon "administrative requirements." Hence the negotiability/arbitrability of police disciplinary action is not presented by this case.

category of negotiations existed for other public employees, and thus teacher transfers, which the Commission held were permissively negotiable, could not be submitted to binding arbitration.

Recently the Appellate Division, citing the Ridgefield Park discussion of a permissible category in police and fire negotiations held "Once a permissive item is agreed upon and becomes part of the parties' collective negotiations agreement it is subject to all of the terms of the parties' grievance procedure." In re Paterson Police PBA Local No. 1, ___ N.J. Super. ___ (App. Div. Docket No. A-257-79, 6/10/80) slip opinion at page 6.^{2/}

Since we are dealing with public police employees for whom permissive negotiations exist, the matter of the transfers of the two officers may be submitted to arbitration if otherwise arbitrable under the contract.^{3/}

ORDER

The City's request for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION

BY Jeffrey B. Tener
JEFFREY B. TENER
Chairman

DATED: June 25, 1980

^{2/} Of course the issue as to whether the instant grievance is contractually arbitrable is not before the Commission. See Ridgefield Park, supra, 78 N.J. at 154.
^{3/} The arbitrability of transfers of police officers is not precluded by statute. N.J.S.A. 40A:14-118, cited by the City, is the general statute giving municipalities the authority to create and maintain a police force and is not the type of specific statute which would render police transfers an illegal subject of negotiations. See State v. State Supervisory Employees, 78 N.J. 54, 81 (1978).