

P.E.R.C. NO. 96-60

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOWELL TOWNSHIP,

Petitioner,

-and-

Docket No. SN-95-34

PBA LOCAL 228,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by PBA Local 228 against Howell Township to the extent the grievance contests the Township's use of a traffic enforcement index as an evaluation criterion or a traffic enforcement standard. The Commission declines to restrain binding arbitration to the extent the grievance alleges that a patrol officer was not informed of the basis on which he was evaluated.

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, Weiner Lesniak, attorneys (Eric M. Bernstein, of counsel)

For the Respondent, Stuart M. Alterman, attorney

DECISION AND ORDER

On October 20, 1994, Howell Township petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of two grievances filed by a patrol officer represented by PBA Local 228. The grievances assert that the Township violated the parties' collective negotiations agreement when in performance evaluations it stated that an officer had not issued enough traffic summonses.

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

The PBA represents the Township's patrol officers. The Township and the PBA entered into a collective negotiations agreement effective from January 1, 1992 to December 31, 1994. The grievance procedure ends in binding arbitration.

Patrol Officer Harry Mottershead was evaluated on July 15, 1993 by Sergeant Fred Killian and rated as meeting departmental standards in every category. Section C of the evaluation form is labeled "Goals or improvement programs." In that section, Mottershead was advised to be more active in motor vehicle stops and to meet department standards in "traffic enforcement and warrant service." In the same section, Killian recommended Mottershead for a supervisory position.

A separate monthly activities report showed that Mottershead had worked 20 days during July 1993 and had issued two traffic summonses. Neither summons was for a moving violation. On that report his supervisor made many positive comments, but also wrote that Mottershead's "traffic enforcement was below standard and could be improved by taking a more active role in traffic motor vehicle stops."

On August 13, 1995, Mottershead filed a grievance challenging his July 1993 monthly evaluation and the Township's "TEI [Traffic Enforcement Index] standard" and its "illegal ticket quota system."<sup>1/</sup> The grievance asked the administration to acknowledge

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<sup>1/</sup> A certification filed by the police chief explains that the "TEI" was a tool developed by the Northwestern University Traffic Institute for measuring a police department's effectiveness. It compares the ratio of injury accidents to summonses issued for hazardous moving violations. According to the chief, the standards in effect in the department from 1977 to 1993 were that each officer should issue 10 to 15 summonses for each 20 day period worked.

that employees should not be evaluated based on traffic enforcement standards.

On November 12, 1993, Mottershead filed a second grievance challenging his monthly activities report for September 1993. That report showed that he had worked 16 days and had not issued any traffic summonses. His supervisor's comments labeled his traffic enforcement efforts "unacceptable" and noted that a new traffic enforcement standard would be read to him.<sup>2/</sup> The grievance challenged his September monthly report, the Township's traffic enforcement standard, and an alleged "illegal ticket quota system."

The grievances were denied and the PBA demanded arbitration. This petition ensued.

Our 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

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<sup>2/</sup> According to the chief, Mottershead's supervisor incorrectly interpreted the TEI when he told Mottershead that the standard was one summons per day. The chief briefed both Mottershead's sergeant and lieutenant who then spoke with Mottershead. Shortly thereafter the chief agreed to try a PBA recommendation that an officer's traffic enforcement performance be reviewed on a six month basis by dividing the number of summonses issued by the number of days worked. According to the chief, the PBA proposal was consistent with the TEI. That system was still in effect when the parties filed their briefs.

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 grievances or any contractual defenses the Township 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 Local 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 of a grievance involving police officers unless the alleged agreement is preempted (not an issue) or would substantially limit government's policymaking powers.

An employer has a non-negotiable right to select the criteria for evaluating its employees. See Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982); Bridgewater Tp. and PBA Local 174, 196 N.J. Super. 258 (App. Div. 1984). Additionally, a law enforcement agency also has a managerial prerogative to determine how it will deliver services to the public. See City of Newark, P.E.R.C. No. 88-137, 14 NJPER 442 (¶19181 1988); Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977). The grievances challenge the criteria for evaluation and the Township's enforcement of traffic laws. Those determinations are not negotiable so we will restrain binding arbitration over them.

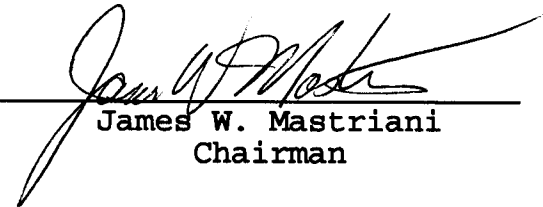
The PBA also asserts that Mottershead was not informed of the basis on which he was evaluated because his sergeant had misconstrued the traffic enforcement index. An agreement to provide notice of evaluation criteria is procedural and would not substantially limit the Township's policymaking powers. Thus, an alleged breach of such an agreement may be resolved through binding arbitration.

#### ORDER

The request of Howell Township for a restraint of binding arbitration is granted to the extent the grievance contests the

Township's use of a traffic enforcement index as an evaluation criterion or a traffic enforcement standard. The request is denied to the extent the grievance alleges that Patrol Officer Harry Mottershead was not informed of the basis on which he was evaluated.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: February 29, 1996  
Trenton, New Jersey  
ISSUED: March 1, 1996