

P.E.R.C. NO. 88-105

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-87-63

FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines a request by the City of Newark to restrain binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12. The grievance alleged that the City violated the 1985-86 collective negotiations agreement between the parties when it assigned dispatching work done by police to Police Communication Clerks, who are not in the FOP unit. The Commission finds that the dispute concerns the preservation of unit work.

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Appearances:

For the Petitioner, Glenn A. Grant, Corporation Counsel
(Denise P. Coleman, Asst. Corporation Counsel)

For the Respondent, Markowitz & Richman, Esqs.
(Steven C. Richman, of counsel; Joel G. Scharff, on the brief)

DECISION AND ORDER

On April 20, 1987, the City of Newark ("City") filed a Petition for Scope of Negotiations Determination. The City seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12 ("FOP"). The grievance alleged that the City violated the 1985-86 collective negotiations agreement between the parties when it assigned dispatching work done by police to police communications clerks, who are not in the FOP unit.

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

The FOP is the majority representative of "All police officers of the Newark Police Department." The job title "Police Communications Clerk" is unrepresented.

On December 5, 1986, the FOP filed a grievance which protested the reassignment of the operation of inquiry Channel Nos. 2 & 4 from police officers to police communications clerks.^{1/} Although the grievance referred to "orders of the Chief of Police" there was apparently no written order until Order No. 87-4 was issued February 26, 1987. The police communications clerk job description does not include radio dispatching.^{2/}

The City denied the grievance and the FOP demanded binding arbitration. This petition ensued.

The City asserts that using the clerks is more economical and efficient. The City's police director certifies that the assignment of police to operate channels 2 & 4 accounted for approximately one-half of the 1786 hours of police officer overtime

^{1/} The grievance alleges that the City's action violated the following articles of the agreement: 1, Recognition, \$1 & \$2; 21, Maintenance of Standards; 25, Extra Contract Agreements, \$1; 27, Discrimination and Coercion, \$1; 34, Fully Bargained Provisions, \$1 & \$2; 35, Duration, \$1 & \$2; and 5, Hours of Work and Overtime, \$5.

^{2/} A January 7, 1987 letter from J. Bandler of the New Jersey Department of Personnel to Thomas Possumato, Jr., President of the FOP, states that to perform radio dispatching functions individuals holding the title of "Police Communications Clerk" should be reclassified to either "Police Radio Dispatcher" or "Communications Officer."

in the Communications Unit between January and April 1986. The City's reply brief asserts that after it directed police communications clerks to operate channels 2 and 4 there were only 79 hours of police overtime in the Communications Unit during the same period in 1987.^{3/} It also suggests that its decision is a governmental policy determination. The police director's certification states "it makes better sense to use police officers to perform direct services to the community to prevent crime and apprehend criminals rather than perform clerical functions."

The City cites Local 195, IFPTE v. State, 88 N.J. 393 (1982), and decisions involving the reorganization of school districts, Freehold Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) and Tenafly Bd. of Ed., P.E.R.C. No. 83-123, 9 NJPER 211 (¶14099 1983).

The FOP contends that the dispute involves its right to preserve the work of its unit. It cites preservation of unit work decisions of the Courts and the Commission.^{4/}

^{3/} The top salary range for police officer is \$28,784 and that for police communications clerk is \$18,300.

^{4/} Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), mot. for recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10127 1979), aff'd App. Div. Dkt. A-3651-78 (1980) [Rutgers I]; Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd. App. Div. Dkt. No. A-468-81T1 (1983) [Rutgers II]; Washington Tp., P.E.R.C. No. 83-166, 9 NJPER 402 (¶14183 1983); and Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd. in relevant part, App. Div. Dkt. No. A-3564-78 (1980).

The boundaries of the Commission's scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154, emphasis added].

Accordingly, we only determine whether the City could legally agree to arbitrate the grievance. We do not determine whether it had a contractual right to assign police communications clerks to the operation of the two inquiry channels.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.^{5/} 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

^{5/} 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.

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 fire fighters, 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 fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy-making 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. [Id. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either 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 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers.

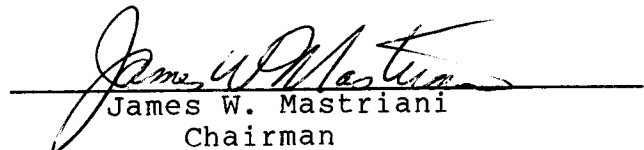
Rutgers I and Rutgers II, both involved the reassignment of police dispatching work; in those cases from civilian clerks to police who were in a different negotiations unit. The Commission found, and the Court affirmed, that "shifting work from employees within a bargaining unit to other employees outside the unit is a mandatory subject of negotiations...." 5 NJPER at 186. The Commission specifically rejected Rutgers' contention that it was exercising a managerial prerogative to cut costs.

We find that this dispute is not distinguishable from the two Rutgers cases. Even though the assignment in this case was made from the FOP unit to unrepresented police communications clerks, the FOP's interest in preserving the work of its unit is no less present. The City's motives were, as Rutgers I and II, predominantly economic; i.e. a desire to reduce overtime expenses. Although the City argues that it is reorganizing the Communications Unit, it does not assert that police no longer perform dispatching on channels 2 and 4.^{6/} Nor has it specified to what extent the overtime hours police formerly worked on the Communications Unit are now being used to provide "direct police services." The City's submissions do not establish that permitting the instant grievance to proceed to arbitration would interfere significantly with the determination of any governmental policy.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

Dated: Trenton, New Jersey
April 27 1988
ISSUED: April 28, 1988

^{6/} Its reply brief acknowledges that there is still overtime being paid to police for dispatching on channels 2 and 4.