

P.E.R.C. NO. 2000-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE  
AND RESCUE,

Petitioner,

-and-

Docket No. SN-2000-56

NORTH HUDSON FIREFIGHTERS  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the North Hudson Regional Fire and Rescue for a restraint of binding arbitration of a grievance filed by the North Hudson Firefighters Association. The grievance contests the transfers of fire officers from other divisions to fill vacant captain positions in the West New York division. The Commission concludes that the Regional's governmental policymaking powers would be substantially limited if it could not permanently transfer fire officers from one fire company within its centralized operations to vacant fire officer positions in other such companies.

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.

P.E.R.C. NO. 2000-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL FIRE  
AND RESCUE,

Petitioner,

-and-

Docket No. SN-2000-56

NORTH HUDSON FIREFIGHTERS  
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys  
(Joan M. Damora, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, P.C., attorneys  
(Bruce D. Leder, on the brief)

DECISION

On November 22, 1999, the North Hudson Regional Fire and Rescue petitioned for a scope of negotiations determination. The Regional seeks a restraint of binding arbitration of a grievance filed by the North Hudson Firefighters Association. The grievance contests the transfers of fire officers from other divisions to fill vacant captain positions in the West New York division.

The parties have filed briefs and exhibits. The Regional has submitted various certifications. These facts appear.

The Regional Fire & Rescue was formed in 1998 pursuant to a merger adopted by five Hudson County municipalities (West New York, Guttenberg, Union City, Weehawken and North Bergen). The

Regional operates pursuant to the Consolidated Municipal Service Act, N.J.S.A. 40:48B-1.

The Regional began operations on January 11, 1999. At that time, it decreased its companies from 21 to 18 by closing one company each in West New York, Weehawken and Union City.

The Joint Committee of the Regional approved an early retirement incentive program. Staff shortages arose when many more fire officers and firefighters than expected retired early. West New York was especially hard hit: it lost six captains in July 1999 and three other fire officers later.

West New York and Guttenberg need 20 fire officers to supervise four engine companies and one truck company operating on four shifts. At present, only ten captains assigned to these companies are from West New York. In response to the unexpected retirements, the Regional permanently transferred two lieutenants and one captain from Union City to West New York companies. These officers were available for transfer because the closing of a Union City fire company eliminated three fire officer positions in that jurisdiction. In addition, three fire officers were permanently transferred from Weehawken to Guttenberg to meet that town's need for fire officers certified as first responders. These transfers were aimed at deploying Regional's most qualified supervisory personnel and to ensure that West New York and Guttenberg had enough experienced, certified fire officers. Fire officers transferred to these positions receive the same pay and

hold the same titles and their transfers did not create any openings in their previous firehouses.<sup>1/</sup> In addition, three fire officer positions and temporary absences due to vacation or sick leave are being filled by West New York firefighters serving as acting captains.

The Regional had expected to fill vacancies through a new promotional list to be certified by the Department of Personnel. But given the numerous retirements, the Regional asked DOP to extend promotional lists in each town to fill vacant captain, lieutenant, and chief positions. On February 1, 2000, DOP approved the use of lists held in abeyance during 1998 and 1999. DOP ruled that the lists were to be used to fill vacancies only in the town for which the list was made and only once within the next 30 days. After March 4, 2000, all appointments must be made by the Regional as a single entity.

The Association represents all firefighters of the Regional. Before the merger, these employees had been represented in four separate negotiations units. On March 16, 1999, the Association was certified to represent all Regional firefighters. The parties have not yet entered into a first contract.

---

<sup>1/</sup> The Association asserts that the transfer caused the Regional to assign a Union City firefighter as an acting captain in a Union City firehouse. The Regional responds that at the time of the transfer, there were no fire officer openings in Union City except for occasional sick leave and vacation coverage.

Pending a new agreement, the parties continue to function under the terms of the prior collective negotiations agreements.<sup>2/</sup> N.J.S.A. 40:48B-4.2 provides:

Where bargaining units are merged which have contracts negotiated in accordance with the provisions of the "New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100 (C.34:13A-1 et seq.) in existence, the terms and conditions of the existing contracts shall apply to the rights of the members of the respective bargaining units until a new contract is negotiated, reduced to writing and signed by the parties as provided pursuant to law and regulations promulgated thereunder.

On June 10, 1999, the Association filed a grievance on a West New York firefighter's behalf. The grievance contested the assignments of Union City fire officers to West New York companies to fill vacant captain positions and maintained that West New York firefighters should have been promoted or assigned as acting captains instead. The grievance alleges that the assignments violated the West New York agreement covering firefighters. Article IV is entitled Assignments. Section 4(a)(1) provides:

Any employee not desiring to serve in a temporary acting capacity may refuse to do so without prejudice. The Employer will make a reasonable effort to obtain an employee to fill such position from the company involved and if it cannot do so the Employer will then seek to fill the temporary assignment to such position from the platoon. If the Employer still cannot fill the temporary assignment from either the company or platoon the Employer may seek such temporary assignment to be filled as a whole.

---

<sup>2/</sup> The Town of Guttenberg agreed to be subject to the West New York agreement for all terms and conditions of employment.

If there are no volunteers, the Employer may assign any employee to such positions provided that the Employer is not necessarily limited to the company.

The grievance remained unresolved and the Association 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 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 grievance or any contractual defenses the employer 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 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.


Under all the circumstances, we hold that the Regional's governmental policymaking powers would be substantially limited if it could not permanently transfer fire officers from one fire company within its centralized operations to vacant fire officer positions in other such companies. The large number of early retirements in West New York caused staffing shortages in supervisory positions. The Regional had a non-negotiable

prerogative to respond to its supervisory shortages by a mixture of permanent transfers of fire officers from other towns and temporary assignments of West New York firefighters as acting captains. The Regional did not change its practice of filling temporary absences caused by sick leave and vacations with firefighters serving as acting captains. While N.J.S.A. 40:48B-4.2 preserves contractual employment conditions until a new agreement is negotiated, we do not believe that statute was meant to prohibit the Regional from permanently transferring fire officers to locations within its centralized operations needing supervisory coverage.

ORDER

The request of North Hudson Regional Fire and Rescue for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Buchanan voted against this decision.

DATED: March 30, 2000  
Trenton, New Jersey  
ISSUED: March 31, 2000