

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Petitioner,

-and-

Docket No. SN-80-15

KEARNY P.B.A. LOCAL NO. 21,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, denies the Town's request for a permanent restraint of arbitration. The Chairman concluded, consistent with prior Commission and judicial decisions, that the gravamen of the grievance relates to the Town's decision to assign superior officers to fill particular positions within the department and is therefore permissively negotiable. A grievance relating to this issue may proceed to arbitration if otherwise arbitrable under the parties' agreement.

P.E.R.C. NO. 80-81

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Appearances:

For the Petitioner, Cifelli & Davie, Esqs.
(Mr. Kenneth P. Davie, Assistant Town Attorney)

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

DECISION AND ORDER

On August 28, 1979 the Town of Kearny (the "Town") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Town and the Kearny P.B.A. Local No. 21 (the "PBA") are within the scope of collective negotiations within the meaning of the New Jersey Public Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Town sought to enjoin the PBA from proceeding to arbitration with regard to a grievance concerning the matters in dispute.

The PBA filed a grievance dated May 31, 1979 alleging that the Town had failed to comply with Article XXXVIII (entitled "Acting

Capacity") when it assigned a sergeant to be in charge of the Town's Traffic Division contrary to the past practice of assigning a Captain to be in charge of that Division. On August 13, 1979 the PBA supplemented its earlier grievance by grieving the assignment of a lieutenant as the Chief of Police's secretary. The PBA maintained that in the past that assignment had always been held by a Captain. Article XXXVIII reads as follows:

In the event one or more of the superior officers of the department is unable to report for duty and cannot be replaced through the system provided for in the Article of this agreement entitled "Overtime", then in such cases:

- (1) When a Captain is not available, the senior lieutenant on duty shall be assigned as acting Captain and be paid the wages of a Captain for such period.
- (2) When a Lieutenant is not available, a Sergeant on duty in order of seniority shall be assigned as Acting Lieutenant and be paid the wages of a Lieutenant for such period.
- (3) When a Sergeant is not available, the senior Patrolman on duty available shall be assigned as Acting Sergeant and shall be paid the wages of a Sergeant for such period.

The Town asserts that the matters at issue relate to substantive assignment decisions that concern the Town's managerial right to deploy its personnel in the manner that it perceives is most likely to promote the public good. The Town maintains that the gravamen of the grievance thus relates to an illegal subject for collective negotiations which may not be arbitrated. The PBA asserts primarily that given the continued existence of permissive

subjects for collective negotiations in police and firefighter negotiations ^{1/} the instant grievances should proceed to arbitration.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission.

The Commission, in prior decisions, has concluded that the determination of the ultimate criteria for the selection of employees to perform particular duties on a temporary or permanent basis and the right to select individuals for promotions and specific assignments is within the scope of managerial authority and not subject to mandatory negotiations. See for example, In re Cinnaminson Township (Police Association), P.E.R.C. No. 79-5, 4 NJPER 310 (14156 1978); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); Board of Education of the Twp. of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976) and Byram Twp. Board of Education and Byram Twp. Education Assn., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (App. Div. 1977). The Commission, in these decisions, has however determined that provisions relating to the assignment of individuals to perform certain responsibilities are permissively negotiable. Consistent with the above decisions, I conclude that

^{1/} We note that the Police and Fire Arbitration Act, Chapter 85, Laws of 1977, refers to permissive subjects at two places: N.J.S.A. 34:13A-16(b) and 16(f)(4).

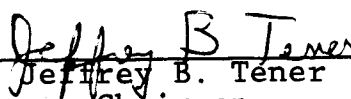
the gravamen of the instant grievance relates to the Town's decision to assign superior officers other than captains to fill particular positions within the department and therefore find that this issue is permissively negotiable. A grievance concerning this issue therefore is arbitrable to whatever extent is provided under the parties' agreement.^{2/}

^{2/} In re Bridgewater-Raritan Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976) the Commission held that if the parties agreed to include a permissive subject of negotiations in a collective negotiations agreement, the matter would be arbitrable, if otherwise arbitrable under the parties' contract. Since the Supreme Court in Ridgefield Park Bd of Ed v. Ridgefield Park Ed. Assn, 78 N.J. 144 (1978) noted that Chapter 85 authorized a permissive category of negotiation for police and fire fighters, the Bridgewater-Raritan analysis continues to remain applicable in police and fire fighter matters. In re State of New Jersey (State Troopers) P.E.R.C. No. 79-68, 5 NJPER 160 (110089 1979); In re Borough of Edgewater, P.E.R.C. No. 80-15, 5 NJPER 368 (110188 1979) and In re City of Paterson, P.E.R.C. No. 80-16, 5 NJPER 369 (110189 1979), appeal pending App. Div. Docket No. A-257-79.

ORDER

Based on the above discussion, it is hereby determined that the issue of the assignment of police officers to fill particular positions is a permissive subject for collective negotiations and that the grievance relating thereto is arbitrable if otherwise arbitrable under the parties' agreement. The Town's request for a permanent restraint of arbitration is hereby denied.^{3/}

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
December 20, 1979

^{3/} As the Commission said in In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975), (cited with approval in Ridgefield Park, supra. at note 1):

Whether the subject [at issue in the grievance] is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense, 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.