

P.E.R.C. NO. 2001-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF GARFIELD,

Petitioner,

-and-

Docket No. SN-2000-86

P.B.A. LOCAL NO. 46,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Garfield for a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 46. The PBA seeks compensation at the lieutenant pay rate for a sergeant who served as a tour commander. Although the initial grievance sought to arbitrate the reassignment and promotion of the sergeant, the Commission concludes that the PBA is seeking to arbitrate only the issue of compensation for working in a higher rank. The Commission holds that whether the City violated the contract when it compensated a sergeant at the sergeant's salary rate rather than the lieutenant's salary rate for duties performed while he was assigned as shift commander may be presented to an arbitrator.

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, Dorf & Dorf, P.C., attorneys  
(Denise P. Coleman, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Leon B. Savetsky, on the brief)

DECISION

On February 25, 2000, the City of Garfield petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 46. The PBA seeks compensation at the lieutenant pay rate for a sergeant who served as a tour commander.

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

The PBA represents patrol officers, investigators, sergeants, lieutenants and captains. The City and the PBA are parties to a collective negotiations agreement effective from January 1, 1997 through December 31, 1999. The grievance procedure ends in binding arbitration.

Dennis Lanaras is a sergeant. On January 14, 1997, he was assigned as the second shift tour commander effective March 1, 1997. He served as tour commander until February 1, 1999, the effective date of his reassignment to the patrol rotation.

During his 23 months as tour commander (officially called shift commander), Lanaras was paid at the sergeants' pay rate. During almost all of that time, he was also number one on a civil service eligibility list for lieutenant. Since he is a veteran, no other officer could have been promoted over him to the position of lieutenant while the civil service list was in effect.

N.J.S.A. 11A:5-6. That list expired on December 25, 1999.

On January 8, 1999, Lanaras gave the chief a hand-written grievance. The grievance alleged that the City had removed him from the tour commander position without cause and had improperly refused to promote him to lieutenant. The grievance specifically asserted that an ordinance required that a tour commander be a lieutenant; that the tour commanders on the other two shifts are lieutenants; and that he was replaced without reason by a sergeant who ranked fifth on the eligibility list. The grievance also stated that an attorney had advised him that he could file a court action seeking such relief as a retroactive appointment to the rank of lieutenant and retroactive monies.

On January 14, 1999, the chief denied the grievance. He asserted that the reassignment was within his assignment powers. He referred Lanaras to the City Manager about the other issues.

Lanaras appealed the denial of his grievance to the City Manager. He attached an arbitrator's decision involving another city and, according to Lanaras, "a similar issue regarding 'out-of-title work' and failure to compensate properly, for which I have presented this grievance." The record does not contain a response.

On February 12, 1999, the PBA demanded arbitration. It identified the grievance as "violation of contract for failure to properly compensate." This petition ensued.

Three days after the petition was filed, the PBA's attorney wrote a letter to the City's attorney stating that the only issue it was seeking to arbitrate "is the failure of the City to properly compensate Sgt. Lanaras for work in a higher rank, while serving as a Tour Commander in the Patrol Division." The PBA disavowed any intention to seek relief in the arbitration proceeding concerning the promotion and reassignment claims.

The arbitration hearing was held on March 10, 2000. The parties stipulated to two issues to be considered by the arbitrator:

- (1) Is the grievance arbitrable?
- (2) If so, did the City violate the 1997-1999 collective bargaining agreement when it compensated Sergeant Dennis A. Lanaras at the Sergeant's salary rate rather than the Lieutenant's salary rate for duties performed while he was assigned as Shift Commander. If so, what shall be the remedy?

In its briefs, the City asserts that its current ordinances do not require that a tour commander be a lieutenant; sergeants have been assigned as commanders for at least 20 years; and the Association has never claimed that sergeants serving as commanders must be paid at a lieutenant's rate. It also claims a contractual prerogative and a statutory right for the chief to assign officers as he sees fit.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

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]

We will not restrain arbitration unless the agreement alleged is preempted or would substantially limit government's policymaking powers. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 13 (¶111 App. Div. 1983).

The grievance initially sought to have Lanaras promoted to the rank of lieutenant and reassigned to the position of tour commander. That type of claim is generally not mandatorily negotiable, see Woodbridge Tp., P.E.R.C. No. 97-101, 23 NJPER 173 (¶28086 1997), but we need not address that issue because the parties have stipulated that the only substantive issue to be considered by the arbitrator is whether Lanaras was properly compensated. That issue is severable from any promotion and reassignment claims. Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Ed. Ass'n, 307 N.J. Super. 263 (App. Div. 1998), certif. den. 156 N.J. 385 (1998); City of Elizabeth and Elizabeth Fire Officers Ass'n, 198 N.J. Super. 382 (App. Div. 1985). Lanaras has already served as tour commander and the question of what the rate of pay


should have been for that work has no necessary connection to whether he was improperly denied a promotion and reassigned. Such compensation claims are mandatorily negotiable. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989); Evesham Tp. Bd. of Ed., P.E.R.C. No. 98-143, 24 NJPER 293 (¶29139 1998); Newark Bd. of Ed., P.E.R.C. No. 96-37, 22 NJPER 21 (¶27008 1995); Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 1993).

The City argues that the grievance did not specify a compensation claim and that there is no basis in the contract or the parties' practice for paying sergeants serving as tour commanders at a higher pay rate. These arguments present issues of contractual arbitrability and contractual merits. They must be addressed to the arbitrator. Ridgefield Park; Woodbridge Tp.

ORDER

We deny the request of the City of Garfield for a restraint of arbitration over whether it violated the contract when it compensated Sergeant Dennis Lanaras at the sergeant's salary rate rather than the lieutenant's salary rate for duties performed while he was assigned as shift commander.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration.

DATED: July 20, 2000  
Trenton, New Jersey  
ISSUED: July 21, 2000