

P.E.R.C. NO. 99-109

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Petitioner,

-and-

Docket No. SN-99-80

NUTLEY P.B.A. LOCAL NO. 33,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Nutley for a restraint of binding of a grievance filed by Nutley P.B.A. Local No. 30. The grievance alleges that the Township violated the just cause provision of the parties' collective negotiations agreement when it denied the police chief's recommendation to promote a police officer to the rank of sergeant. The Commission concludes that permitting arbitration of a claim that the Township is contractually required to fill a position, even though it has decided to leave the position vacant, would substantially limit the employer's policymaking decision not to fill vacant positions pending a departmental reorganization.

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, Savage & Serio, P.A., attorneys
(Thomas J. Savage, on the brief)

For the Respondent, Abramson & Liebeskind Associates,
labor relations consultants
(Arlyne K. Liebeskind, Ed.D, on the brief)

DECISION

On April 16, 1999, the Township of Nutley petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Nutley P.B.A. Local No. 30. The grievance alleges that the Township violated the just cause provision of the parties' collective negotiations agreement when it denied the police chief's recommendation to promote a police officer to the rank of sergeant.

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

The PBA represents police officers and sergeants employed by the Township. The parties' most recent agreement expired on

December 31, 1998 and the parties are in interest arbitration proceedings for a successor agreement. The grievance procedure ends in binding arbitration. The agreement contains a just cause provision. It states:

No officer shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any occupational advantage, or given an adverse evaluation of his services without just cause. Any such action asserted by the Council, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth if recourse is not provided for under Title 11 of 40A.

The Township is a civil service employer. There is an existing list of police officers eligible for promotion to the rank of sergeant. Police officer David Moran is ranked first. The Township indicates that under the present table of organization a sergeant position is vacant. A proposed ordinance before the Nutley Township governing body would reorganize the police department and reduce the number of sergeants. This proposed ordinance is the result of a study conducted by a consultant and the State Attorney General's office.

On January 14, 1998, the police chief recommended to the director of public safety that patrol officers Moran and Ross be promoted to the rank of sergeant to fill positions soon to become vacant due to retirements. He also informed the director that these officers would be placed in acting sergeant positions pending permanent assignment and that they would receive on-the-job training. When he did not receive a promotion, Moran filed a grievance on February 2, 1998.

On February 3, 1998, the chief responded to Moran's grievance stating that he believed the sergeant vacancies would not be filled and that Moran should proceed with his grievance. In May, the chief sent additional correspondence to the director regarding the sergeant vacancies. In June, the deputy police chief informed the director that promotions would be more cost effective given overtime costs in the second half of the year. The chief issued Special Order #98-17 on June 3 outlining a procedure to maintain an adequate distribution of overtime assignments due to staff shortages relating to the position of sergeant. On June 29, the chief advised the director of a third vacancy in the rank of sergeant due to a planned retirement on October 1.

In August 1998, during a second step grievance proceeding, the PBA submitted this summary of events leading to the grievance:

In cases of this nature, it is generally incumbent upon the employer to prove that the complained of action was for "just cause." In the instant matter, the Township has failed to show cause why Officer David Moran wasn't promoted and having shown no good and just cause for denying him that promotion, the decision should be reversed and he should be made sergeant. Moreover, in light of the needs of the department and the qualifications of Patrolman Moran, the promotion would enhance the efficiency and effectiveness of the Nutley Police Department.

The grievance remained unresolved and the PBA demanded arbitration. This petition ensued.

The Township maintains that it retains the right to decide whether and when to make promotions.

The PBA's position is that the Township's failure to promote Moran violated the just cause provision. The PBA asserts that the chief assigned Moran as an acting sergeant and recommended that he be promoted to that position, and that Moran was denied the position even though he is first on the list. The PBA agrees that the Township has a right to decide whether or not to fill a vacancy. It asserts, however, that the chief of police who is the best person to decide the department's staffing needs. The chief decided to fill the sergeant position and recommended that the officer at the top of the list be promoted. It is that management decision that the PBA is seeking to enforce through the just cause provision.

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. 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. [Id. at 92-93; citations omitted]

We will not restrain arbitration of a grievance involving police officers unless the alleged agreement is preempted or would substantially limit government's policymaking powers.


Given our limited jurisdiction, we do not consider the contractual merits of the grievance. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

Paterson bars arbitration of a claim that the Township is contractually required to fill a vacant sergeant position even though it has decided to leave the position vacant. Permitting arbitration would substantially limit the employer's policymaking decision not to fill vacant positions pending a departmental reorganization. See also City of Newark, P.E.R.C. No. 98-102, 24 NJPER 126 (¶29064 1998); Montclair Tp., P.E.R.C. No. 98-36, 23 NJPER 546 (¶28272 1997). That a member of the employer's management team endorses filling this vacant position does not transform the prerogative to leave open a vacancy into a negotiable matter subject to grievance arbitration.

ORDER

The request of the Township of Nutley for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: June 22, 1999
Trenton, New Jersey
ISSUED: June 23, 1999