

P.E.R.C. NO. 93-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-93-29

ATLANTIC COUNTY SHERIFF
PBA LOCAL 243,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Atlantic County Sheriff PBA, Local 243 against the Atlantic County Sheriff to the extent, if any, the grievance seeks an order requiring the employer to buy more vehicles or to subcontract maintenance operations. The grievance asserts that some of the vehicles assigned to the Sheriff's Department are unsafe. An arbitrator may determine if a contractual safety provision has been violated.

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Appearances:

For the Petitioner, Martin R. Pachman, P.C.
(Joel G. Scharff, of counsel)

For the Respondent, DuBois, Sheehan, Hamilton & Levin,
attorneys (Daniel M. Replogle, III, of counsel)

DECISION AND ORDER

On October 8, 1992, the Atlantic County Sheriff petitioned for a scope of negotiations determination. The Sheriff seeks a restraint of binding arbitration of a grievance filed by Atlantic County Sheriff PBA Local 243. The grievance asserts that some of the vehicles assigned to the Sheriff's Department are unsafe.

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

Local 243 represents all Sheriff's Officers, Sheriff's Officer Sergeants, Sheriff Office Sergeants (I.D.), and Sheriff's investigators. There are about 110 employees in the negotiations unit. The parties entered into a collective negotiations agreement

effective from January 1, 1990 through December 31, 1992. Article XX is entitled Safety, Health and Administration. It provides:

The Employer shall provide Employees with any wearing apparel, tools or devices reasonably necessary in order to insure their safety, health and security.

The contract's grievance procedure ends in binding arbitration of contractual disputes.

The County has assigned 33 vehicles to the Sheriff's department. As of June 1, 1992, 20 of these vehicles had more than 100,000 miles on them and 12 of the vehicles were more than five years old. According to Local 243, many of these vehicles have had accidents or have broken down on the road, thus imperilling officers, inmates, and members of the public. The PBA asserts that transmission repairs have been put off until vehicles have broken down and that vehicles have problems with their brakes and front-end alignments.

On August 9, 1991, the PBA filed a grievance asserting that the unsafe conditions of the Sheriff's vehicles violated Article XX. The grievance cited "the age of departmental vehicles, lack of proper maintenance and repair, and excessive mileage" and it described break downs and accidents. It also cited N.J.S.A. 40A:2-22, which is part of the local bond law and which states that the useful life of automotive vehicles (other than passenger cars and station wagons) shall not be considered to be more than five years. The Sheriff denied this grievance.

On June 17, 1992, Local 243 demanded binding arbitration.

It identifies this grievance to be arbitrated:

As of June 1, 1992, 20 of the 33 vehicles assigned to the Sheriff's Department by the County have excessive mileage (mileage in excess of 100,000). Twelve (12) of the 33 vehicles are five (5) years old or older. These vehicles are unsafe and constitute a violation of Article 20, Safety, Health and Administration, under the Collective Bargaining Agreement.

According to the Sheriff, Local 243 has stated that it will seek an order compelling the County to replace certain older vehicles with new ones or to use private repair facilities. This petition ensued.

The Sheriff asserts that the number of vehicles and the subcontracting of maintenance work to private garages are not negotiable. The PBA responds that this dispute predominately relates to the safety of the Sheriff's employees and that the equipping and repair of departmental vehicles are therefore mandatorily negotiable. It concedes that the number of vehicles is not negotiable and that an arbitrator may not require the County to acquire more vehicles; but it asserts that an arbitrator may legally find a violation of Article XX and adopt such remedies as directing the employer to formulate a specialized maintenance and repair program, to use other repair facilities besides those staffed in-house by the County, and to allow officers to refuse to operate unsafe vehicles.

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 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]

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

For purposes of this decision, we will assume that the employer has a non-negotiable right to determine the number of vehicles in its fleet and we will accept Local 243's concession that an arbitrator may not order the employer to buy more vehicles.

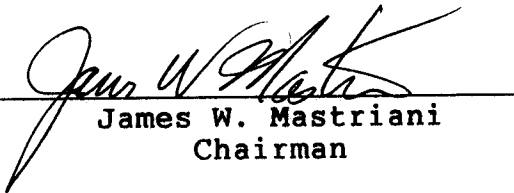
Morris Cty., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd App. Div. Dkt. No. A-795-82T2 (1/12/84), certif. den. 97 N.J. 672 (1984); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), rev'd in pertinent part, App. Div. Dkt. No. A-3564-78 (6/19/80). We also hold that decisions concerning the subcontracting of maintenance operations are not negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982). We will therefore restrain arbitration to the extent, if any, the grievance seeks an order requiring the employer to buy more vehicles or to subcontract maintenance operations.

Article XX, however, is negotiable in the abstract since it does not substantially limit governmental policy and an arbitrator may determine whether that contractual obligation has been violated. Given our prior discussion, we will not speculate about the propriety or impropriety of any other potential remedy at this juncture. If the arbitrator sustains the grievance and issues an award the Sheriff believes improper, the Sheriff may challenge that remedy through post-arbitration proceedings. Old Bridge Tp. Bd. of Ed. v. Old Bridge Tp. Ed. Ass'n, 98 N.J. 523 (1985); State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985); Deptford Bd. of Ed., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981).

ORDER

The request of the Atlantic County Sheriff for a restraint of binding arbitration is granted to the extent, if any, the grievance seeks an order requiring the employer to buy more vehicles or to subcontract maintenance operations.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: February 22, 1993
Trenton, New Jersey
ISSUED: February 23, 1993