

P.E.R.C. NO. 95-105

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FRANKLIN,

Petitioner,

-and-

Docket No. SN-95-38

FRANKLIN TOWNSHIP P.B.A. LOCAL 154,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Franklin Township P.B.A. Local 154 against the Township of Franklin. The grievance contests the employer's denial of light duty assignments to patrol officers injured off the job. The Commission finds that it is undisputed that there are light duty positions available. Whether an employee was injured on-duty or off-duty is irrelevant to whether that employee is physically qualified to perform light duty. Instead, that consideration merely concerns the allocation of available light duty assignments among qualified employees and that allocation issue is legally arbitrable.

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, Ruderman & Glickman, attorneys  
(Steven S. Glickman, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,  
attorneys (Robert A. Fagella, of counsel)

DECISION AND ORDER

On October 24, 1994, the Township of Franklin petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by Franklin Township P.B.A. Local 154. The grievance contests the employer's denial of light duty assignments to patrol officers injured off the job.

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

Local 154 represents the employer's rank-and-file police officers. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

On June 15, 1993, General Order No. 93-004 became effective. That order limited light (or restricted) duty to officers injured on the job. Light duty was defined as a temporary work assignment based on an officer's inability to perform his/her normal duties due to an on-the-job injury. Eligibility for light duty depended upon a determination by the officer's physician that the officer was capable of work and a determination by the officer's Division Commander that work was available. The administration reserved the right to make assignments in the department's best interest.

In the summer of 1994, two patrol officers were injured while off duty. Apparently, one officer injured his knee at home while the other officer reinjured a shoulder initially injured on the job. Both officers applied for light duty assignments, but were turned down because their injuries were suffered off-duty.

On July 29, 1994, Local 154 filed a general grievance. The grievance asserted that the employer's light duty policy was arbitrary and that there should be no distinction between on-duty and off-duty injuries. The grievance asked that the two patrol officers be credited with any sick, vacation, personal or compensatory time used during their absences and that they be paid for any "lost days."

The Township Manager denied the grievance. Local No. 154 then demanded arbitration. The demand identified this dispute to be arbitrated:

The Township has unilaterally issued a light duty policy which excludes from light duty any officer who is injured off the job. Pursuant to that policy, Officers Casale and Gomberg were improperly refused light duty. The distinction between on-the-job and off-the-job injuries as the determining factor in whether to offer light duty to an officer violates the agreement, the past practice of the parties and applicable law.

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 cannot consider the 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 Local 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) or would substantially limit government's policymaking powers.

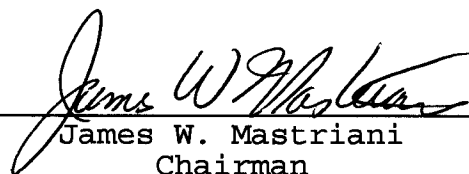
We have restrained arbitration of grievances demanding that an employer create light duty assignments. City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992); Montgomery Tp., P.E.R.C. No. 89-22, 14 NJPER 574 (¶19242 1988); City of Camden, P.E.R.C. No. 83-128, 9 NJPER 220 (¶14104 1983). But we have declined to restrain arbitration of grievances asserting that employees were denied light duty assignments that were available and for which they were qualified. City of Englewood, P.E.R.C. No. 94-114, 20 NJPER 257 (¶25128 1994); City of Englewood, P.E.R.C. No. 93-110, 19 NJPER 276 (¶24140 1993). Such claims are at least permissively negotiable.

This dispute is legally arbitrable. It is undisputed that there are light duty positions available. Whether an employee was injured on-duty or off-duty is irrelevant to whether that employee is physically qualified to perform light duty. Instead, that consideration merely concerns the allocation of available light duty assignments among qualified employees. That allocation issue is legally arbitrable. Compare City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982) (allocation of overtime is mandatorily negotiable). We therefore decline to restrain arbitration.

ORDER

The request of the Township of Franklin for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: May 23, 1995  
Trenton, New Jersey  
ISSUED: May 24, 1995