

P.E.R.C. NO. 84-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF PATERSON,

Respondent,

-and-

Docket No. SN-84-42

PATERSON POLICE P.B.A., LOCAL #1,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission holds that an arbitration award in favor of Paterson Police PBA, Local #1 against the City of Paterson is within the scope of collective negotiations. The arbitrator found that the City had agreed to compensate Lieutenant John Docherty at the rate of pay for a first step Captain for the time he spent on temporary assignment performing the duties of a Captain. The Commission finds that the issue of compensation for temporary assignments in a higher rank is mandatorily negotiable.

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Appearances:

For the Respondent, Ralph L. DeLuccia, Jr.,
Corporation Counsel (James A. Farber, Assistant
Corporation Counsel)

For the Petitioner, Mark C. Rushfield, Esq.

DECISION AND ORDER

On January 23, 1984, Paterson Police P.B.A. Local No. 1 ("PBA") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The PBA seeks a declaration that an arbitration award, which the City of Paterson ("City") has sought to vacate in the Chancery Division of the Superior Court, is within the scope of collective negotiations. The arbitration award orders the City to compensate Lieutenant John Docherty at the rate of pay for a first step captain for the time he spent on temporary assignment performing the duties of a captain.

The parties have briefs and documents. The following facts appear.

The PBA is the majority representative of all the City's sworn police officers, excluding the chief and deputy

chiefs, and police chauffeurs. The City and the PBA have entered a collective negotiations agreement which contains a grievance procedure culminating in binding arbitration. Article 11, entitled Temporary Assignments, provides:

When an employee is assigned to perform the duties of a higher rank for thirty (30) consecutive working days or more, the employee so assigned shall be paid the rate of the first step of the higher rank for the entire period in which the employee has performed the duties of the higher rank.

The police department has rules and regulations setting forth the duties of captains and lieutenants. They provide that at least one captain shall be on duty at headquarters at all times unless otherwise ordered by the chief or the Board of Fire and Police Commissioners. The senior captain is next in command to the chief and deputy chief and in their absence performs their duties. The captain in command is charged with examining all reports of lieutenants and sergeants. Lieutenants are next in command to captains and in the absence of the captains perform their duties.

There are three shifts in the Patrol Division: (1) 7:30 a.m. to 3:30 p.m., (2) 3:30 p.m. to 11:30 p.m., and (3) 11:20 p.m. to 7:20 a.m. On June 19, 1983, Lieutenant Docherty was assigned as the commanding officer of the second shift; he replaced Captain Mohl. Lieutenant Docherty was the first lieutenant, rather than captain, appointed as commanding shift officer. According to the chief of police, Lieutenant Docherty

received this assignment because the City had decided to eliminate the position of captain through attrition and thus to place lieutenants in charge of details with essentially the same duties as captains.^{1/}

Lieutenant Docherty retained his assignment as commanding officer until October 24, 1983 when Lieutenant Glasser replaced him; Glasser, in turn, was replaced by Captain Mohl on November 6, 1983. During his temporary assignment as a commanding officer, Docherty performed all the duties of a captain specified in the rules and regulations. The City, however, continued to pay him the salary of a lieutenant. By contrast, captains continued to be the commanding officers on the first and third shifts between June 19 and October 24, 1983 and to receive the pay of captains.

On August 16, 1983, Lieutenant Docherty filed a grievance claiming that Article 11 entitled him to pay at the rate of a first step captain for the time he spent on his temporary assignment performing the duties of a captain. The Director of Public Safety, stating that the new policy was for lieutenants to be in charge of shifts, denied this grievance. The PBA demanded binding arbitration and on November 2, 1983, arbitrator Jeffrey B. Tener conducted a hearing. On November 28, 1983, the arbitrator issued an award finding that the City had violated the contract and ordering it to pay Lieutenant Docherty the difference between

^{1/} It appears that there have been several layoffs and reductions in rank in Paterson in the past several years.

the rate of pay for a first step captain and his rate of pay as a lieutenant from June 19 to October 24, 1983.

On December 23, 1983, the City commenced an action in the Chancery Division of the Superior Court. The City asserted that the arbitrator erred in finding the grievance timely; allegedly misconstruing the department's regulations and the parties' contract; and finding that a managerial prerogative to make assignments did not make the compensation issue non-negotiable and non-arbitrable. The Court then transferred this matter to the Commission to determine the scope of negotiations issue.

The Association asserts that the arbitration award concerned the mandatorily negotiable subject of compensation for temporary assignments in a higher rank. It relies upon In re Borough of Pitman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981) ("Pitman") and In re City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982 ("Camden").

The City asserts that it has a managerial prerogative to make assignments and, in particular, to decide that henceforth lieutenants will handle the duties previously assigned to captains. It asserts that compensating lieutenants at the rate of first step pay for captains will significantly interfere with its ability to phase out the captain position through attrition. It relies upon various statutes, regulations, and cases recognizing its prerogative to make assignments and reductions in force. See, e.g., N.J.S.A. 48:14-143; N.J.A.C. 4:1-15.7; and In re City of Camden, P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982).

At the outset of our analysis, we note that the Commission's jurisdiction is limited to the abstract issue of whether the subject of the award is within the scope of collective negotiations. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, we do not consider the contractual merits of the PBA's claims, the City's defenses, or the arbitrator's award.

An arbitrator's award involving police or fire employees is within the scope of negotiations if it involves either a mandatory or permissive subject of negotiations. Paterson PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) ("Paterson"); In re Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981). In Paterson, the Supreme Court set forth the following tests for determining whether a subject is mandatorily or permissively negotiable:

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 an inconsistent term in their agreement. State Supervisory Employees, supra, 78 N.J. at 81. 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. Woodstown-Pilesgrove, supra, 81 N.J. 591. 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 policy-making 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 pp. 92-93.

In the instant case, no statutes or regulations control the issue of what is the appropriate rate of pay for a lieutenant performing the duties of captain during a temporary assignment. The statutes and regulations the City cites afford it the power to make such temporary assignments and to reduce its police force, but do not specifically afford it the unilateral power to reduce the rate of pay employees previously received for performing the duties of the higher rank.

The Commission has repeatedly held that clauses setting the compensation for temporary assignments in a higher rank are mandatorily negotiable. Pitman; Camden; see also Kearny PBA Local No. 21 v. Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 14 (¶11009 1980), aff'd App. Div. Docket No. A-1617-79 (Dec. 18, 1981). The City's right to make assignments and reductions in force is severable from, and not adversely affected by, its obligation to negotiate over compensation for assigned duties. Ramapo-Indian Hills Ed. Ass'n Inc. v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980); In re County of Morris, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd App. Div. Docket No. A-795-82T2 (Jan. 12, 1984), pet. for certif. pending, Supreme Court Docket No. _____.^{2/} It is at the heart of collective negotiations that public employers and

^{2/} In the instant case, for example, enforcement of Article 11 does not require the City to rescind any reduction it has already made or negate any attendant cost savings it has already achieved through attrition. Further, the City realizes some additional cost savings under Article 11 by

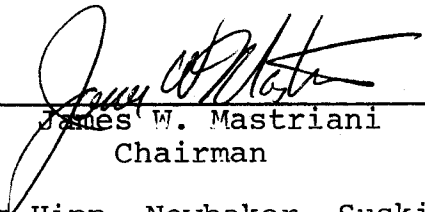
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public employees negotiate given rates of pay for the performance of given duties.

ORDER

The arbitration award in favor of Paterson Police P.B.A. Local No. 1 is within the scope of negotiations.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Newbaker, Suskin, Butch and Wenzler voted for this decision. Commissioner Graves was not present. None opposed.

DATED: Trenton, New Jersey
April 12, 1984
ISSUED: April 13, 1984

2/ (Continued)

paying lieutenants at the first step of the captains' scale, rather than the step the captain previously occupied. In short, Article 11 does not impose any additional costs on the public employer's right to make temporary assignments and reductions in force; instead it merely limits the achievement of extra savings at the expense of employees whose representative contracted for certain rates of pay for certain duties.