

P.E.R.C. NO. 2000-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF SECAUCUS,

Petitioner,

-and-

Docket No. SN-2000-57

SECAUCUS P.B.A. LOCAL 84,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a grievance filed by Secaucus P.B.A. Local 84 is at least permissively negotiable and therefore legally arbitrable. The grievance challenged a directive cancelling leaves of absence for certain shifts on December 31, 1999 and January 1, 2000. The Town of Secaucus's request for an interim relief order to restrain an arbitration hearing was denied and the arbitrator issued an award in favor of the PBA. The Commission concludes that an employer has a reserved prerogative to deny or revoke leaves when necessary to ensure that it will have enough employees to meet its staffing needs and respond to emergencies, but the arbitration award does not prevent the Town from meeting its staffing levels and thus is legally enforceable.

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, Martin R. Pachman, attorney

For the Respondent, Lindabury, McCormick & Estabrook,
attorneys (Donald B. Ross, Jr., on the brief)

DECISION

On November 24, 1999, the Town of Secaucus petitioned for a scope of negotiations determination. The Town sought a restraint of binding arbitration of a grievance filed by Secaucus P.B.A. Local 84. The grievance challenged a directive cancelling leaves of absence for certain shifts on December 31, 1999 and January 1, 2000.

The Town sought an interim relief order restraining an arbitration hearing scheduled for December 23, 1999. On December 13, Commission designee Stuart Reichman denied the Town's request. I.R. No. 2000-6, 26 NJPER 83 (¶31032 1999). He found that the underlying issue was one of compensation, not staffing levels, and he concluded that the Town had not demonstrated a

substantial likelihood of prevailing in a final Commission decision. The Town applied for leave to file an emergent appeal of the designee's decision, but that application was denied by Appellate Division Judge Conley and Chief Justice Poritz. The Town then moved before the Commission's Chair for reconsideration of the designee's order. On December 22, the Chair denied that motion, concluding that neither an emergency Commission meeting nor a stay of the arbitration was warranted. The arbitration went forward and on December 24, 1999, the arbitrator issued an award upholding the grievance.

The parties have filed exhibits, certifications, and briefs. We allowed the parties to file additional statements after the arbitrator's award. The Town did so.

The interim relief decision sets forth the facts. 26 NJPER at 83-84. We incorporate those facts. We add that the parties framed this issue before the arbitrator:

Did the Town violate Article 8.08 of the collective bargaining agreement by refusing to grant two men off per shift on the evening shift of December 31, 1999 and the midnight shift of January 1, 2000? If so, what shall be the remedy?

In upholding the grievance, the arbitrator concluded:

Although the issue of arbitrability has been addressed in other forums, the Arbitrator finds it reasonable to consider the contract in the context of the public policy, as suggested by the Town. The Arbitrator finds that this is not truly a case over manning but simply a dispute over compensation. The Town has the full capability to replace officers who might exercise their contractual leave rights. It is

true that the replacement employees may have to be compensated at overtime rates, however, that is an issue of compensation not manning. Other elements of Article 8 provide the Town with the power to recall employees for mandatory overtime, even if off duty or on leave, if the manning needs as might be caused by a true emergency require every available officer. The Arbitrator is quite comfortable that enforcement of the leave benefits in Article 8.08 has no potential negative impact on the public interest because the Town is able to reach its determined manning levels without violating the contract. There is simply no inherent conflict between the manning needs that the Town has determined are appropriate and access to the leave benefits sought by the PBA. The only potential impact is the compensation of those assigned to replace the employees on leave, assuming the Town decides that replacement is necessary. This is not truly a dispute over manning.

In conclusion, the Town violated the collective bargaining agreement by refusing to grant two men off per shift on the evening shift of December 31, 1999 and the midnight shift of January 1, 2000. The appropriate remedy is an order permitting the officers to avail themselves of the contractual rights under Article 8.08 of the collective bargaining agreement and requiring the Town to cease and desist from refusals in violation of the contract.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v.

Ridgefield 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 the grievance or arbitration award.

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. City of 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 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 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least

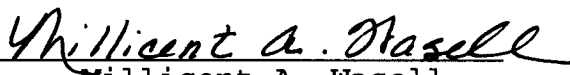
permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

Under the circumstances of this case, we hold that the arbitration award does not substantially limit the Town's governmental policy-making powers. We accept and incorporate our designee's analysis of the negotiability issue. 26 NJPER at 84-85. We add that the employer has a reserved prerogative to deny or revoke leaves when necessary to ensure that it will have enough employees to meet its staffing needs and respond to emergencies. See, e.g., Long Hill Tp., P.E.R.C. No. 2000-40, 26 NJPER 19 (¶31005 1999). But the arbitration award does not prevent the Town from meeting its staffing levels and thus is legally enforceable.

ORDER

The subject of the grievance is at least permissively negotiable and therefore legally arbitrable.

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: March 30, 2000
Trenton, New Jersey
ISSUED: March 31, 2000