

P.E.R.C. NO. 92-38

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and-

Docket No. SN-91-44

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 1861

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that the subject of a grievance filed by the International Association of Firefighters Local 1861 against the Town of West New York is within the scope of negotiations. The grievance sought compensation for deputy chiefs who allegedly served as acting chief when the fire chief was on vacation for five days.

P.E.R.C. NO. 92-38

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and-

Docket No. SN-91-44

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS LOCAL 1861

Respondent.

Appearances:

For the Petitioner, Eric Martin Bernstein, attorney

For the Respondent, Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On January 4, 1991, the Town of West New York petitioned for a scope of negotiations determination. The Town sought a restraint of binding arbitration of a grievance which the International Association of Firefighters Local 1861 ("IAFF") had filed. The grievance sought compensation for deputy chiefs who allegedly served as acting chief when the fire chief was on vacation for five days. The arbitrator has since issued an award. The Town now seeks a determination that the subject of the grievance is outside the scope of negotiations.

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

The IAFF represents the Town's fire captains, deputy chiefs, and fire officers in the title of fire protection sub-code

official/combustible inspector. The parties entered into a collective negotiations agreement effective from January 1, 1989 to December 31, 1991. Article IV, §4(b) provides:

Effective January 1, 1990, when an employee is assigned by the chief or his designee to work out of title at a rank higher than his regular rank, he shall be compensated for such work at the rate of such higher rank, effective upon assignment, for the time period that the employee of the higher rank could be performing said duties (e.g; Deputy Chief for Chief on a vacation day could result in eight (8) hours pay.) The rate of pay shall be one third (1/3) the difference between the higher rank's base pay, and the assigned employee's rate of pay inclusive of the assigned employee's longevity.

The grievance procedure ends in binding arbitration.

The Chief is the superior ranking officer and commands the force. Deputy chief is the next highest rank. Under department regulations, "the Deputy Chief of the Fire Department, as designated by the Chief, shall command the entire Department during the absence of the Chief and shall be responsible to the Chief for the proper performance of all duties." These regulations also empower the chief to designate officers to perform temporarily the duties of officers in the next highest rank and to specify the duties to be performed. The management rights clause of the parties' contract subjects the employees and the employer to department regulations.

On April 17, 1990, the fire chief notified all platoon commanders that he would be on vacation from the afternoon of Wednesday, April 18 until Monday, April 23. The chief did not designate an acting chief. During previous vacations he had designated a deputy chief or chiefs to be acting chief.

On April 23, 1990, the IAFF filed a grievance. It asserted that the chief had violated department regulations, the contract, and past practice by failing to assign an acting chief and that the deputy chiefs who were on duty during the chief's absence "should have been assigned and in fact immediately assumed the duties of the Chief and shall be entitled to acting chief's pay."

The employer denied this grievance. It took the position that the deputy chiefs were not entitled to extra compensation because the chief had not assigned them to act as chief.

The IAFF demanded arbitration over this issue:

Has the Employer violated the work contract by failing to compensate a Deputy Chief for acting in lieu of the Chief on April 18, 19, 20, 21 and 22 of 1990?

If so, payment immediately for such time so served to the appropriate Deputy Chief.<sup>1/</sup>

This petition ensued.

On June 6, 1991, the arbitrator issued his award. He concluded that under the department regulations the deputy chief on duty assumed command during the chief's absence and that under the contract the deputy chiefs on duty during the chief's vacation days were entitled to the compensation called for by Article IV, § 4(b).<sup>2/</sup> He denied extra compensation to deputy chiefs on duty the

---

<sup>1/</sup> The demand for arbitration included another grievance immaterial to this decision.

<sup>2/</sup> Since the deputy chiefs' salaries exceeded the chief's salary, the arbitrator ruled that the deputy chiefs were not entitled to extra compensation unless the Town increased the chief's base salary retroactively for the relevant period.

weekend of April 21 and 22 since the chief works Mondays through Fridays and was simply off-duty, rather than on vacation, during that time.

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 do not consider the merits of the 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 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]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). Since there is no statute or regulation which preempts negotiations, we need only decide whether the agreement alleged would substantially limit government's policymaking powers.

The employer contends that it has a prerogative not to appoint anyone to be in command when the fire chief is on vacation or to appoint whomever it wants. We have held, however, that clauses concerning the selection of qualified superior officers for acting assignments may be permissively negotiable. See Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1979), aff'd App. Div. Dkt. No. A-1617-79 (12/18/81). See also Montclair Tp., P.E.R.C. No. 90-9, 15 NJPER 499 (¶20206 1989); City of Newark, P.E.R.C. No. 81-96, 7 NJPER 134 (¶12057 1981). But cf. Nutley Tp., P.E.R.C. No. 91-17, 16 NJPER 483 (¶21209 1990) (restraining arbitration of grievances over captains instead of firefighters replacing captains on shifts at minimum staffing levels); City of Atlantic City, P.E.R.C. No. 83-93, 9 NJPER 79 (¶14043 1982)

(restraining arbitration of grievance over deputy chiefs rather than battalion chiefs assuming command in absence of fire chief). The Appellate Division affirmed Kearny and held that Paterson's standards for permissive negotiability were met given the temporary nature of the appointments. The present case, in any event, centers on a claim that by virtue of the employer's regulations, the deputy chiefs were in fact assigned to act as chief and should be paid accordingly. That compensation claim is mandatorily negotiable. S. Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); City of Paterson, P.E.R.C. No. 84-113, 10 NJPER 257 (¶15123 1984); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982).

ORDER

The subject of the grievance is within the scope of negotiations.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained from consideration.

DATED: September 30, 1991  
Trenton, New Jersey  
ISSUED: October 1, 1991