

P.E.R.C. NO. 94-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
HANOVER TOWNSHIP,

Petitioner,

-and-

Docket No. SN-94-34

PBA LOCAL 128,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of grievances filed by PBA Local 128 against Hanover Township. The grievances contest the Township's method for assigning off-duty jobs. The Commission finds that clauses allocating outside employment opportunities among qualified police officers are, in general, mandatorily negotiable. The PBA's proposal, if used to assign outside jobs to qualified employees, would not substantially limit the employer's policymaking powers.

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Appearances:

For the Petitioner, Courter, Koubert, Laufer, Purcell & Cohen, attorneys (Fredric M. Knapp, of counsel and on the brief; Laura Lencses McLester, on the brief))

For the Respondent, Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano (David Solomon, of counsel)

DECISION AND ORDER

On October 30, 1993, Hanover Township petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances which PBA Local 128 has filed. The grievances contest the Township's method for assigning off-duty jobs.

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

The PBA is the majority representative of the Township's patrol officers and sergeants. The parties' collective negotiations agreement has a grievance procedure ending in binding arbitration.

The Township has had a long-standing policy governing the distribution of off-duty work assignments ("side jobs") among the

ranks of deputy chief, lieutenant, sergeant, detective and patrol officer. When side jobs become available, a sign-up list is circulated. The side jobs are given to the highest-ranking officers on the list. Selection among officers in the same rank is made by time in rank and then time in the department.

In March 1993, the PBA proposed this change in the side job policy:

1. Side jobs on a monthly basis or jobs that are received with at least 5 days notice to the date of the job shall be handed out by seniority according to the date of the most recent appointment as a sworn officer in the Township of Hanover.

2. Any job received with 4 days or less notice to the date of the job shall be posted on the side job board and it will be handled on a first come, first serve [sic] basis.

On April 6, 1993, the PBA filed a grievance alleging that the existing policy violated a maintenance of standards clause in the parties' agreement. Two days later, a separate grievance was filed by a detective alleging that his department seniority should have given him preference for a side job which had been taken by a higher-ranking, but less senior, officer.

The chief denied the grievances. He characterized the problem as "[o]ne group would like the jobs distributed one way and the other group another way. What do we do?" He believed that dispensing side jobs by rank was consistent with past procedures and showed a "balance in distributing extra work." The Township Committee upheld the chief's decision and the PBA sought binding arbitration. This petition ensued.

The employer asserts that the dispute is not legally arbitrable because it involves the "assignment and scheduling of extra manpower for outside employment" which is a non-negotiable prerogative. The PBA asserts that the ability to earn extra income through off-duty employment is a mandatorily negotiable term and condition of employment. It states that this dispute solely involves the method of selecting among indisputably qualified officers for such assignments and implicates no scheduling or staffing issues.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park 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 address the contractual merits of the grievances 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. Compare Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981) with Local 195, IFPTE v. State, 88 N.J.

393 (1982). Paterson outlines the steps of a scope of negotiations analysis for police officers:

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]

Because this case involves grievances, arbitration will be permitted if the subject is at least 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). No preemption arguments have been made.

Clauses allocating outside employment opportunities among qualified police officers are, in general, mandatorily negotiable. See Montclair Tp., P.E.R.C. No. 90-39, 15 NJPER 629 (¶20264 1989); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987). Cf.

Bowman v. Pennsauken Tp., 709 F. Supp. 1329 (D.N.J. 1989). Compare City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982) (allocation of overtime opportunities).

The employer relies on Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985). There we held that a proposal calling for a PBA president and police director to jointly administer outside employment was an undue delegation of managerial authority and hence was not mandatorily negotiable. Orange Tp. does not apply because this dispute is solely over which of two objective methods should be used in allocating outside work.<sup>1/</sup> Neither of the competing methods, if used to assign outside jobs to qualified employees, would substantially limit the employer's policymaking powers. Bowman. Accordingly, we decline to restrain arbitration. The merits of the union's contractual claim and any contractual defenses the public employer may have are for the arbitrator to consider.

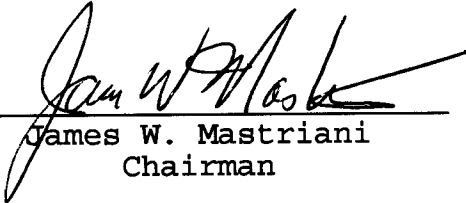
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<sup>1/</sup> The employer also relies on Old Bridge Tp. H.E. No. 90-39, 16 NJPER 193 (¶21081 1990), as holding that assignment of personnel to outside jobs is a prerogative. Old Bridge is a Hearing Examiner's recommended decision. We did not accept that recommendation and instead dismissed the unfair practice allegation relating to the outside employment policy as not timely filed. Old Bridge Tp., P.E.R.C. No. 90-102, 16 NJPER 307, 310 (¶21127 1990), aff'd App. Div. Dkt. No. A-5353-89T2 (9/18/92).

ORDER

The request for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

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

DATED: February 16, 1994  
Trenton, New Jersey  
ISSUED: February 17, 1994