

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Petitioner,

-and-

Docket No. SN-96-140

STATE TROOPERS FRATERNAL
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration of grievances pressed by the State Troopers Fraternal Association ("STFA"). The grievances assert that the employer violated the parties' collective negotiations agreement when three state troopers holding the rank of Trooper II were not advanced to the rank of Trooper I at the same time as the other members of their recruit class. The STFA does not seek to have the three troopers advanced in grade, but instead asserts that they are entitled to be compensated at the Trooper I pay rate retroactive to the date of the advancement of other members of their recruit class. The Commission finds that there is no alleged right to increased compensation independent of a promotion under Article VIII.

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, Peter Verniero, Attorney General
(John Franzini, Deputy Attorney General)

For the Respondent, Loccke & Correia, P.A., attorneys
(Joseph Licata, of counsel)

DECISION AND ORDER

On June 19, 1996, the State of New Jersey (Division of State Police) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of grievances pressed by the State Troopers Fraternal Association ("STFA"). The grievances assert that the employer violated the parties' collective negotiations agreement when three state troopers holding the rank of Trooper II were not advanced to the rank of Trooper I at the same time as the other members of their recruit class.

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

The parties entered into a collective negotiations agreement effective from July 1, 1993 to June 30, 1996. The

recognition clause covers troopers generally but does not specify the positions of Trooper II and Trooper I. Article VIII governs promotions. Section A is entitled Promotion to Trooper II and Trooper I. It provides:

1. Promotions to Trooper II and Trooper I are based on the law and the annual appropriation provided.
2. Commanders shall submit the names of all eligible personnel for promotional consideration and any recommendations of Station Commanders, staff and subordinate officers to the Superintendent.
3. a. All promotions are probationary for one (1) year during which time the individual must meet the requirement of the new rank or grade as established by the Superintendent. Failure to meet the requirements will subject the individual to reduction to former rank or grade.
b. When conditions warrant, the Superintendent may extend the probationary period an additional six (6) months.

Section B applies to promotions to Sergeant and Detective Sergeant. The grievance procedure ends in binding arbitration of contractual disputes.

Members of the 103rd State Police Recruit Class were promoted to Trooper I from Trooper II, effective August 5, 1995. Three class members were not promoted on that date.

On August 8 and 9, 1995, the three troopers filed individual grievances. The STFA also filed a grievance on their behalf. The grievances alleged that the denials of promotions were arbitrary and capricious and violated Article VIII, Section A as well as the "Complete Agreement" and "Non-Discrimination"

articles. The grievances sought the promotion of the troopers to Trooper I, retroactive to the same day as the rest of their recruit class and with all attendant benefits, rights, and privileges. Two individual grievances sought removal from the troopers' personnel files of all references to the promotion denials. The grievances do not allege any violations of Article X governing salaries and that article does not specify separate pay grades for Trooper, Trooper II, and Trooper I.

On December 14, 1995, a captain designated by the superintendent of State Police conducted a hearing. On January 10, 1996, he issued a report recommending that the grievances be denied. The designee found that the "only promotional criteria for Trooper I [are] time in grade (nine and one-half years) and submission of names of the eligible personnel for promotional consideration." The designee concluded, however, that the troopers were considered for promotion and that the superintendent acted within his power pursuant to N.J.S.A. 53:1-5.2 to grant or deny promotions. The report noted that the three officers were the subjects of pending disciplinary actions, although formal charges had only been served on one officer. The designee also concluded that denials of promotions (as opposed to alleged violations of promotional procedures) are not grievable. On January 12, the superintendent approved the report.

On March 2, 1996, the three troopers were promoted to Trooper I with the members of the 104th recruit class.

The STFA's president has filed a certification. He asserts, in part, that the STFA no longer seeks a retroactive advancement in grade for the troopers and does not challenge the superintendent's decision to establish promotional criteria or his decision to promote or not promote State troopers. Instead, the STFA seeks compensation for the differential between Trooper I and Trooper II, retroactive to August 5, 1995. He further asserts that during the negotiations that resulted in the 1970-1972 contract, the parties agreed to create the pay classifications of Trooper, Trooper II, and Trooper I in lieu of proposed longevity benefits. He also asserts:

- A. Troopers, Troopers II and Troopers I each perform the same job duties undifferentiated by these pay gradations;
- B. Unlike promotions to non-commissioned and commissioned officer ranks, no vacancies must be announced in order to advance a Trooper to Trooper II or a Trooper I. To the contrary, recruit classes are submitted for advancement in grade and salary when they reach the respective seven years and nine and one-half years threshold;
- C. The current criteria for advancement in pay grade are seven years of employment for Trooper II and nine and one-half years of employment for Trooper I and the submission of the names of all eligible personnel for consideration by station and Troop commanders is also a requirement. In contrast to the procedure used by the NJDSP to advance a Trooper in grade and salary to Trooper II and I, the NJDSP issues formal announcements which contain detailed promotional criteria for non-commissioned and commissioned officer positions and ranks. (Samples of such announcements are attached to this Certification as Exhibit 1);

- D. A Trooper II is not considered a supervisor of a Trooper nor is a Trooper I considered supervisory vis-a-vis Trooper II or Trooper I;
- E. Promotions to the position of Sergeant and Detective Sergeant may be opened to all Trooper grades.^{1/} In contrast, promotions in the lieutenant and above ranks are made from the next lowest rank; and,
- F. Trooper, Non-Commissioned Officers and Commissioned Officers are not covered under the same collective negotiations agreements by design. Trooper, Trooper II and Trooper I are combined for coverage under the STFA Collective Negotiations Agreement.

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. [78 N.J. at 154]

Thus, we do not consider whether these grievances are contractually arbitrable or meritorious.

^{1/} A vacancy announcement for the position of sergeant attached to the president's certification states that personnel eligible to be considered for that promotion must hold the rank of Trooper I.

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 Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA 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 fire fighters, 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 fire fighters, 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]

When a negotiability dispute involving police officers or firefighters arises over 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 NJPER Supp.2d 13 (¶111 App. Div. 1983).

Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

The employer asserts that N.J.S.A. 53:1-5.2 preempts negotiations over the superintendent's decisions to promote employees in rank or grade. That statute states:

Notwithstanding any other provision of law, the rank and grade of any member of the State Police may be changed from time to time, and the number of personnel increased by the superintendent of state police where such change or increase is necessary for the efficient operation of the Division of State Police in the Department of Law and Public Safety; provided, the action in making any such change or increase shall be approved by the head of said department.

The employer also asserts that the superintendent has a managerial prerogative to determine whether and when to promote employees.

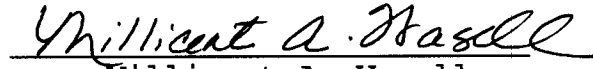
The STFA does not seek to have the three troopers advanced in grade to Trooper I retroactive to August 5, 1995, the date the other troopers in their recruit class were promoted. Nevertheless, the STFA claims that the three troopers are entitled to be compensated at the Trooper I pay rate effective as of that date. Under the circumstances presented, we do not believe that this claim is severable from the superintendent's uncontested decision not to promote these troopers on August 5, 1995. There is no alleged right to increased compensation independent of a promotion under Article VIII. Compare Monmouth Cty., P.E.R.C. No. 96-15, 21 NJPER 347 (¶26213 1995) (declining to sever compensation claim from non-negotiable promotion decision). Contrast Village of Ridgewood,

P.E.R.C. No. 93-87, 19 NJPER 216 (124104 1993) (dispute centering on advancement in pay status is mandatorily negotiable). We will therefore restrain arbitration.

ORDER

The request of the State of New Jersey (Division of State Police) for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: February 27, 1997
Trenton, New Jersey
ISSUED: February 28, 1997