

P.E.R.C. NO. 2000-60

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-2000-28

STATE TROOPERS NON-COMMISSIONED
OFFICERS 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 two grievances filed by the State Troopers Non-Commissioned Officers Association. The grievances seek the reassignment of two officers to the positions of acting lieutenant and acting sergeant first class. The Commission finds that decisions to transfer troopers are non-negotiable and the issue of compensation is not severable from the transfer.

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, John J. Farmer, Jr., Attorney General
(Sally Ann Fields, Senior Deputy Attorney General, on the
brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Joseph Licata, on the brief)

DECISION

On August 27, 1999, the State of New Jersey (Division of
State Police) petitioned for a scope of negotiations
determination. The State seeks a restraint of binding arbitration
of two grievances filed by the State Troopers Non-Commissioned
Officers Association. The grievances seek the reassignment of two
officers to the positions of acting lieutenant and acting sergeant
first class.

The parties have filed exhibits and briefs. The
Association has filed a certification. These facts appear.

The Association represents State police holding the ranks of sergeant, detective sergeant, sergeant first class and detective sergeant first class. The State and the Association are parties to a collective negotiations agreement effective from July 1, 1996 to June 30, 1999. The grievance procedure ends in binding arbitration for claimed violations of the agreement.

On May 26, 1999, the acting superintendent of the State Police announced several transfers and assignments. Stanley Fagans, a sergeant first class and an assistant administrative officer, was transferred to Troop D in the Moorestown Station and assigned as acting station commander. In that post, Fagans would be deemed to be an acting lieutenant. Thomas M. Majkutowski, a sergeant in Troop E, Construction Unit, was transferred to Troop E, Traffic, and assigned as acting specialist supervisor. In that assignment, he would be considered to be an acting sergeant first class.

On June 1, 1999, the acting superintendent rescinded the transfers of Fagans and Majkutowski. On June 2, a lieutenant was transferred to the position of acting station commander at the Moorestown Station.

On June 9, 1999, Fagans and Majkutowski filed grievances over the rescission of the May 26 transfer orders. The grievances allege the rescissions were:

arbitrary and capricious and in violation of the contract between the State of New Jersey and State Troopers Non-Commissioned Officers Association. More specifically, Article XVI,

Paragraph B and Article XXIX, Paragraph B, of the agreement.

The grievances seek the immediate re-assignment of Fagans and Majkutowski to the respective positions of acting lieutenant and acting sergeant first class, retroactive to the date of the original transfers.

On July 15 and July 20, 1999, the acting superintendent denied the grievances. He responded that the decision to rescind the transfers was based on operational needs and was an exercise of managerial authority and responsibility under the Management Rights clause of the contract.

On August 6, 1999, the Association demanded arbitration. It identified the grievance as "improper compensation and improper removal from position." This petition ensued.

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 cannot consider the contractual merits of this grievance or any contractual defenses the employer may have.

The scope of negotiations is broader for police officers and firefighters than for other public employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these tests for determining the negotiability of a subject affecting 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 dispute arises from grievances, arbitration is 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 130 (¶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 decisions to transfer employees involve fundamental governmental policy decisions that cannot be reviewed by an arbitrator. The employer further argues that negotiations over transfer decisions are preempted by N.J.S.A. 53:1-5.2's grant of powers to the superintendent.

The Association asserts that as an acting station commander, Fagans would have been considered an acting lieutenant and would have gained experience necessary for promotion to that position. Similarly, Majkutowski, as acting specialist supervisor, would have been considered an acting sergeant first class and would have gained experience necessary for promotion to that position. The Association asserts that the employees' interests in furthering their career advancement outweighs the superintendent's unspecified reasons for these transfers.

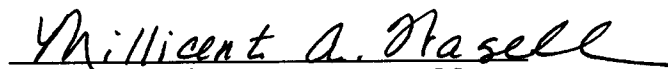
The substantive decision to transfer or reassign a public employee is preeminently a policy determination. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 571-573 (1998); Local 195, IFPTE v. State, 88 N.J. 393, 417 (1982); Ridgefield Park at 156. Even a disciplinary transfer of a trooper is non-negotiable. State v. State Troopers Ass'n, 134 N.J. 393 (1993); see also N.J.S.A. 34:13A-5.3. We appreciate the employees' interests in improving their promotional prospects, and we note that the employer has not specified its operational reasons for these transfers. But we see no basis for modifying the rule that decisions to transfer troopers are non-negotiable. We note that

the compensation issue is not severable from the transfer and that the grievance does not seek a statement of reasons for the transfers.

ORDER

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

BY ORDER OF THE COMMISSION



Millicent A. Wasell

Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: January 27, 2000
Trenton, New Jersey
ISSUED: January 28, 2000