

P.E.R.C. NO. 2003-27

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-2002-73

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 a grievance filed by the State Troopers Non-Commissioned Officers Association. The grievance contested an assignment to the position of Assistant Unit Head on the New Jersey Turnpike. The Commission concludes that transferring or reassigning a public employee based on an assessment of relative qualifications is preeminently a policy determination. The Commission restrains binding arbitration over the challenge to the scoring, ranking and rating system used to determine the assignment.

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, David Samson, Attorney General
(Sally Ann Fields, Senior Deputy Attorney General, on the
brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Merick H. Linsky, on the brief)

DECISION

On June 10, 2002, 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 a grievance filed by the State Troopers
Non-Commissioned Officers Association. The grievance contests an
assignment to the position of Assistant Unit Head on the New
Jersey Turnpike.

The employer filed a Statement of the Case and attached a
brief from another case. The respondent then filed an untimely
brief. The employer asked us not to consider that brief or, in
the alternative, to require the respondent to file an extension
request nunc pro tunc.

On September 25, 2002, the respondent filed a request to file an extension nunc pro tunc. It takes the position that the filing of a late brief did not prejudice the petitioner and that the parties regularly consent to extensions of time.

On September 27, 2002, the petitioner filed a response opposing the request. It asserts that no reasons for the request have been stated and that lack of prejudice in granting extensions does not explain why an extension is being sought in this case.

We will not accept the respondent's brief. The respondent has not provided a reason for its request for an extension or a basis to grant that request nunc pro tunc. We therefore do not consider the petitioner's reply brief.

The Association represents sergeants, detective sergeants, sergeants first class and detective sergeants first class. The parties' collective negotiations agreement is effective from July 1, 2000 through June 30, 2004. The grievance procedure ends in binding arbitration of claimed violations of the agreement.

Article XV is entitled Promotions. Section A provides: "Promotions to the rank of Sergeant First Class, Detective First Class and Lieutenant shall be made based on the application of relevant and reasonable criteria and subcriteria to be established by the Division as to each vacancy to be filled." The ensuing sections set forth procedures for announcing promotional criteria and vacancies and for compiling promotional lists.

Article XX is entitled Non-discrimination. It provides that the provisions of the agreement shall apply equally to all employees and that there shall be no intimidation, interference, or discrimination.

Article XXIX is entitled Complete Agreement. It provides, in part, for the maintenance of past practices.

On March 6, 2002, a teletype message announced the transfer of Sergeant Mark Martin from a Squad Supervisor position on the Garden State Parkway to an Assistant Unit Head position on the New Jersey Turnpike. The transfer was effective March 23, 2002.

On March 20, 2002, the Association filed a grievance on behalf of Joseph Puhalski. The grievance contested the evaluation method, including the scoring, ranking, or rating system used to place Martin in the Assistant Unit Head position. The grievance asserted that the assignment was made arbitrarily and capriciously and in violation of Articles XV, XX and XXIX. As relief, the grievance sought the immediate reassignment of Puhalski to that position retroactive to the date of the original transfer.

The grievance was denied and the Association demanded arbitration. This petition ensued.

The employer argues that transfer and reassignment decisions are an inherent managerial prerogative. It relies on State of New Jersey (Div. of State Police), P.E.R.C. No. 2000-61,

26 NJPER 98 (¶31040 2000), recon. den. P.E.R.C. No. 2000-80, 26
NJPER 206 (¶31083 2000).

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 the grievances 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]

Arbitration of grievances 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.

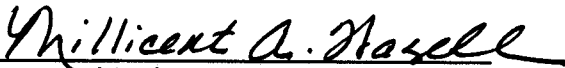
Transferring or reassigning a public employee based on an assessment of relative qualifications is preeminently a policy determination. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 571-573 (1998); Local 195, IFPTE v. State, 88 N.J. 393, 417 (1982); Ridgefield Park at 156. Even a disciplinary 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 restrain binding arbitration over the challenge to the scoring, ranking and rating system used to determine this assignment. That challenge would substantially limit the employer's prerogative to set and evaluate qualifications.

ORDER

The request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration over the evaluation method used to determine the March 23, 2002 assignment of Sergeant Mark Martin is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: October 31, 2002
Trenton, New Jersey
ISSUED: November 1, 2002