

P.E.R.C. NO. 2003-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WAYNE,

Petitioner,

-and-

Docket No. SN-2003-30

WAYNE P.B.A. LOCAL NO. 136,

Respondent.

Appearances:

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Wayne for a restraint of binding arbitration of a grievance filed by Wayne P.B.A. Local No. 136. The grievance alleges that an officer is entitled to additional longevity and vacation pay, as well as senior officer status, based on prior years of service with another department. The Commission finds that initial placement on a salary guide and terms and conditions of employment resulting from such placement are mandatorily negotiable terms and conditions of employment.

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, Mark J. Semeraro, Township
Attorney (John J. McKniff, Assistant Township
Attorney, on the brief)

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

DECISION

On December 19, 2002, the Township of Wayne petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Wayne P.B.A. Local No. 136. The grievance alleges that an officer is entitled to additional longevity and vacation pay, as well as senior officer status, based on prior years of service with another department.

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

The PBA represents all sworn, regular full-time police officers. The parties' collective negotiations agreement is

effective from January 1, 2001 through December 31, 2004. The grievance procedure ends in binding arbitration.

Officer Joseph Duncan was hired by the Township on October 3, 1994. He had been employed for five years and two months by the Fairfield police department.

On July 2, 2002, the PBA filed a Step 2 grievance alleging that pursuant to past practice, Duncan is entitled to additional longevity and vacation pay, as well as senior patrol status, based on his prior service with the Fairfield police department. Duncan is currently credited for only the 7 years and 7 months time served with the Wayne police department. The grievance states that the Township has, on at least one occasion, given an officer credit for prior service in another municipality.

On July 22, 2002, the acting chief denied the grievance. He wrote, in part:

At the time of your hire with the Wayne Police Department you were compensated for your previous experience by starting at a Step 4 pay grade rather than the entry level grade of someone without police experience. Your status form dated December 2, 1994 also reflects that you were not to receive longevity payments until you served five (5) years with the Wayne Police Department.

The Township administrator denied the grievance at Step 3. He stated that there was no set practice concerning prior service and that the two officers cited who received prior credit were hired in 1986 and their original status forms recognized their

prior service. He referred to Duncan's status form when he was hired which provides that "No longevity payment until officer serves 5 years with Wayne Township Police Department. Salary (Step 4) reflects 5 years previous service with another municipal police department." He stated that the Township recognized Duncan's prior service when it placed him at Step 4 rather than Step 1. Finally, the administrator stated that the grievance is untimely since Duncan signed his status form when hired in 1994 and the grievance was not filed until 2002.

On November 26, 2002, the PBA demanded arbitration. 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 do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

The Township argues that this grievance is time-barred since Duncan was hired eight years ago; that it has not deviated from

its practice of crediting prior service since 1994 when Duncan was hired; and that the PBA waived its right to grieve this matter by refusing to negotiate over prior service credit during two rounds of successor contract negotiations.

The PBA argues that all of the Township's arguments are contractual defenses and that initial salary guide placement is a mandatorily negotiable term and condition of employment.

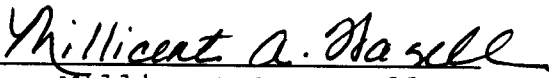
Under the negotiability balancing test, initial placement on a salary guide and terms and conditions of employment resulting from such placement (longevity, vacation, seniority status) are mandatorily negotiable terms and conditions of employment.

Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000); Cranford Bd. of Ed., P.E.R.C. No. 2003-19, 28 NJPER 415 (¶33151 2003); see also Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). The Township's arguments address contractual arbitrability issues rather than negotiability concerns. Ridgefield Park. We therefore decline to restrain binding arbitration.

ORDER

The request of the Township of Wayne for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani and Ricci voted in favor of this decision. None opposed. Commissioners Katz and Sandman were not present.

DATED: March 27, 2003
Trenton, New Jersey
ISSUED: March 28, 2003