

P.E.R.C. NO. 2004-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Petitioner,

-and-

Docket No. SN-2004-18

P.B.A. LOCAL 205,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Hillsborough for a restraint of binding arbitration of a grievance filed by P.B.A. Local 205. The grievance contests the chief's refusal to allow a patrol officer to file criminal charges against a civilian who had filed an internal affairs complaint against him. The Commission concludes that under the particular circumstances of this case, the Township's policymaking powers would be substantially limited if a negotiated agreement could override the decision not to permit a police officer to bring criminal charges against a civilian for providing false information to a police department.

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, Eric M. Bernstein & Associates, LLC, attorneys (Eric Martin Bernstein, on the brief)

For the Respondent, Alterman & Associates, attorneys (Stuart J. Alterman, on the brief)

DECISION

On September 12, 2003, the Township of Hillsborough petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 205. The grievance contests the chief's refusal to allow a patrol officer to file criminal charges against a civilian who had filed an internal affairs complaint against him.

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

The PBA represents the Township's police officers, excluding lieutenants, captains, and the police chief. The parties' collective negotiations agreement is effective from January 1,

2000 through December 31 2003. The grievance procedure ends in binding arbitration.

On January 5, 2003, a patrol officer issued a traffic summons to a civilian. The civilian subsequently filed an internal affairs complaint alleging misconduct by the officer while issuing the summons. The officer was exonerated after an internal affairs investigation, including a review of a tape of the traffic stop. According to the PBA, the investigating sergeant opined that criminal charges should be brought against the civilian for providing false information to the police.

The officer requested the opportunity to file such criminal charges. The chief decided that charges should not be filed and prohibited the officer from filing his own criminal complaint. According to the Township, it has a longstanding policy of having the chief make the final decision as to whether criminal charges are to be filed for a non-indictable offense such as providing false information to the police. The Township states that its policy is consistent with a standard operating procedure requiring that the Superintendent of State Police authorize the filing of any charges for filing a false complaint against a State trooper.

On April 23, 2003, the PBA filed a grievance alleging that the chief violated Article XXVI by not allowing the officer to

file criminal charges. Article XXVI is entitled Legal References. It provides:

Nothing contained in this Agreement shall alter the authority conferred by law, ordinance, resolution, or administrative code and the police department rules and regulations upon any Township official or in any way abridge or reduce such authority. This Agreement shall be construed as requiring Township officials to follow the terms contained therein, to the extent that they are applicable in the exercise of responsibilities conferred upon them by law.

Nothing contained herein shall be construed to deny or restrict to any employee such rights as he may have under any other applicable laws and regulations. The rights granted to employees hereunder shall be deemed to be in addition to those provided elsewhere.

The PBA asserts that police officers should be allowed to file criminal charges if there is sufficient probable cause and justification.

On May 5, 2003, the chief denied the grievance as involving a managerial prerogative that is outside the collective negotiations agreement and the scope of negotiations. On May 21, the Township police committee denied the grievance for the same reasons. The grievance was moved to the Township committee level. We assume that committee also denied the grievance although no written denial has been supplied. On June 26, 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 parties' competing interpretations of Article XXVI.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

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 and 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.
[Id. at 92-93; citations omitted]

Arbitration will be permitted if the dispute is at least 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.

Neither party asserts that a statute or regulation applies to this dispute or preempts negotiations. We appreciate the exonerated officer's interest in seeking the extra vindication of a successful criminal complaint against his accuser. But under the particular circumstances of this case, the Township's policymaking powers would be substantially limited if a negotiated agreement could override the decision not to permit a police officer to bring criminal charges against a civilian for providing false information to a police department. See City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998) (negotiability determinations must be based on the facts of each case). The decision to bring criminal charges against citizens

who have complained to a police department is a sensitive one that can have major repercussions on community-police relations and on the willingness of citizens to file complaints. It is not a matter for the negotiations process. We note that this case does not involve an attempt to restrict any right an officer might have to file a civil lawsuit against a complainant or other types of criminal complaints.

ORDER

The request of the Township of Hillsborough for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani abstained from consideration. Commissioner Katz was not present.

DATED: January 29, 2004
Trenton, New Jersey
ISSUED: January 29, 2004