

P.E.R.C. NO. 2004-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2004-24

P.B.A. LOCAL NO. 11
(SUPERIOR OFFICERS ASSOCIATION),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Trenton for a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 11 (Superior Officers Association). The grievance contests the transfer of a police captain. The Commission holds that the discipline amendment authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments or transfers of police officers. Police officers who believe that they have been unjustly reassigned or transferred as a form of discipline must file a Superior Court action in lieu of prerogative writ.

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, Laufer, Knapp, Torzewski & Dalena,
LLC, attorneys (Stephen Trimboli, on the brief)

For the Respondent, Wills, O'Neill & Mellk, attorneys
(G. Robert Wills, on the brief)

DECISION

On November 12, 2003, the City of Trenton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 11 (Superior Officers Association). The grievance contests the transfer of Captain Stephen Hornyak.

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

The SOA represents all police sergeants, lieutenants, captains, and deputy chiefs. The parties' collective negotiations agreement is effective from July 1, 2000 through

December 31, 2005. The grievance procedure ends in binding arbitration.

Section IV of the parties' agreement is entitled Employee Rights. Sections 4.02 covers an officer's right to engage in political activity when not on duty and sets forth the standards that apply when an officer is being investigated.

On June 22, 2003, Stephen Hornyak was transferred from the Internal Affairs Unit to a Night Captain position. An SOA grievance alleged that the transfer was made without charges or a hearing and without just cause in violation of section 4.02. The grievance also stated that transfer or reassignment is the fifth level of discipline followed by suspension without pay, loss of promotional opportunity, demotion, and discharge from employment.

On June 25, 2003, the police director denied the grievance. He wrote that transfers are within management's prerogative and are not part of the disciplinary process. On July 22, the City administrator denied the grievance as untimely. She wrote that transfers are not part of the disciplinary process and that there was no evidence that Hornyak's transfer was disciplinary.

On August 5, 2003, the SOA demanded arbitration. The demand asserted that the transfer contravened N.J.S.A. 34:13A-25^{1/} and other related statutes and regulations, lacked a justifiable

^{1/} N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons.

basis, and was effected without following appropriate procedures. This petition ensued.

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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

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 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 City argues that consistent with well-settled case law, reassignments or transfers of police officers may not be submitted to arbitration, even if the alleged reassignment is disciplinary.

The SOA urges us to reconsider that case law. It argues that a police officer disciplined by a transfer should not have to file an action in lieu of prerogative writ in the Superior Court. It contends that the same public policy considerations justify our jurisdiction over disciplinary transfers for education employees. Finally, it contends that Court Rule 4:69-5

appears to require a negative determination by a state administrative agency before a party can file a prerogative writ application.^{2/}

While we understand the SOA's arguments and public policy concerns, we are not free to rewrite the text of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., or overrule court decisions construing it. Specifically, our holdings are based on the discipline amendment to section 5.3, as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993), and amended in 1996. That statute authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments or transfers of police officers. Union Cty. Sheriff, P.E.R.C. No. 2003-2, 28 NJPER 303 (¶33113 2002); Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30002 1998). Therefore, police officers who believe that they have been unjustly reassigned or transferred as a form of discipline must file a Superior Court action in lieu of prerogative writ. Monmouth Cty. v. CWA, 300 N.J. Super. 272, 289 (App. Div. 1997).

The SOA's argument concerning R. 4:69-5 is without merit. That rule states that "actions under R. 4:69 shall not be maintainable as long as there is available a right of review

^{2/} Neither party addresses the procedural claims raised in the grievance and demand for arbitration.

before an administrative agency which has not been exhausted." Even if Hornyak must exhaust an administrative remedy before filing in the Superior Court, that requirement does not make the grievance legally arbitrable.

ORDER

The request of the City of Trenton for a restraint of binding arbitration over the contention that Captain Stephen Hornyak was transferred without just cause is granted.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

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

DATED: February 26, 2004
Trenton, New Jersey
ISSUED: February 27, 2004