

P.E.R.C. NO. 2005-29

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2005-003

F.O.P. LODGE 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Newark for a restraint of binding arbitration of a grievance filed by F.O.P. Lodge No. 12. The grievance alleges that a police lieutenant violated a departmental policy when he split up two officers assigned to one patrol car and ordered one officer to complete a burglary report and ordered the other officer to handle an accident report. The Commission concludes that upholding this grievance would substantially limit management's prerogatives to determine staffing levels and to deploy officers as it deems best given the number of officers available to handle the simultaneous receipt of multiple service calls.

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, Joanne Y. Watson, Corporation  
Counsel (Phillip Dowdell, Assistant Corporation  
Counsel, on the brief)

For the Respondent, Markowitz & Richman, attorneys  
(Stephen C. Richman, on the brief)

DECISION

On July 21, 2004, the City of Newark petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by F.O.P. Lodge No. 12. The grievance alleges that a police lieutenant violated a departmental policy when he split up two officers assigned to one patrol car and ordered one officer to complete a burglary report while the other officer was ordered to handle an accident report.

The parties have filed briefs and exhibits. The City has submitted the certification of Anthony Caruso, the then police lieutenant and now captain. These facts appear.

The FOP represents all police officers, excluding managerial executives, professional employees and superior officers. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2004. The grievance procedure ends in binding arbitration.

The police department has a one-officer patrol car policy. The policy, designated as Memorandum Number 88-149, became effective on August 8, 1988. It sets the conditions under which a one-officer patrol car unit may be used and under which a two-officer patrol car unit must be used. For example, a one-officer unit cannot be dispatched to any high-rise housing project unless the unit is responding as a back-up to a two-officer unit. According to the FOP, the parties negotiated this policy in light of the officers' safety concerns. According to the City, this policy was discussed, but not negotiated and it is not part of the parties' contract.

Officers Miguel Aviles and Larry Lizio share a patrol car and form police unit #216. On February 10, 2004, these officers were working on the 7:00 a.m. to 3:30 p.m. shift while Lieutenant Caruso was assigned to the Central Communications Division and was dispatching officers to respond to service calls. At one point during the morning, Caruso split the officers up and ordered one to complete a burglary report at one location while

the other officer was ordered to handle an accident report at another location.

At the end of the tour, Officer Aviles completed an "administrative submission" form. The submission set forth Aviles' account of earlier assignments that day and his belief that Caruso had belittled and annoyed the two officers as they handled those assignments. Aviles concluded that he and Lizio had been singled out and that "[t]he splitting up of officers in this particular manner has in our many years of service never been standard operating procedure." In response, Caruso's certification sets forth his account of the earlier assignments. According to Caruso, he had to make quick decisions in light of multiple service calls and a limited number of available officers and he did not believe that splitting up the officers endangered either one.

The FOP filed a grievance incorporating Aviles' administrative submission. It asserted that splitting up the officers violated the "one man car" policy as well as contract articles entitled Recognition, Maintenance of Standards, Management Rights, Rules and Regulations, FOP Privileges and Responsibilities, Fully Bargained Provisions, and Duration.

The grievance was not resolved at the department level so the FOP 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 this grievance or any contractual defenses the City 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:

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. No preemption issue is presented.

Public employers are accorded broad discretion in determining how best to deploy police officers and assign them to particular duties. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 570-574 (1998); see also West Milford Tp., P.E.R.C. No. 2000-63, 26 NJPER 104 (¶31042 2000). Determining the number of police officers assigned to a patrol car has thus been held to be a non-negotiable issue of setting staffing levels. City of Plainfield, P.E.R.C. No. 84-29, 9 NJPER 601 (¶14254 1983); cf. Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983), aff'd NJPER Supp. 2d 143 (¶128 App. Div. 1984) (despite impact on safety, a proposal requiring that two officers always be assigned

to transport prisoners to hospital's secure ward was not mandatorily negotiable). Upholding this grievance would substantially limit management's prerogatives to determine staffing levels and to deploy officers as it deems best given the number of officers available to handle the simultaneous receipt of multiple service calls. The PBA's safety concerns are not severable from these prerogatives. Contrast Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101 (¶31041 2000) (citing cases that allow arbitration of grievances invoking contractual safety assurances or premium pay provisions). We therefore restrain arbitration of the FOP's grievance.

ORDER

The request of the City of Newark for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



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Lawrence Henderson  
Chairman

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

DATED: October 28, 2004  
Trenton, New Jersey  
ISSUED: October 28, 2004