

P.E.R.C. NO. 2005-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT
OF CORRECTIONS),

Petitioner,

-and-

Docket No. SN-2004-058

NEW JERSEY SUPERIOR OFFICERS
ASSOCIATION, CAPTAINS, F.O.P.
LODGE 187,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Department of Corrections) for a restraint of binding arbitration of a grievance filed by a captain represented by the New Jersey Superior Officers Association, Captains, F.O.P. Lodge 187. The grievance challenges the captain's step placement on the captains' salary guide. The Commission concludes that any appeal from a Department of Personnel action interpreting N.J.A.C. 4A:3-4.9 must be made to the Merit System Board or in court.

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, Peter C. Harvey, Attorney General
(George N. Cohen, Deputy Attorney General, on the
brief)

For the Respondent, Captain Robert A. Tesoroni, Jr., on
the brief

DECISION

On March 30, 2004, the State of New Jersey (Department of Corrections) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by a captain represented by the New Jersey Superior Officers Association, Captains, F.O.P. Lodge 187. The grievance challenges the captain's step placement on the captains' salary guide.

The parties have filed briefs and exhibits. The employer has submitted two certifications as well. These facts appear.

FOP Lodge 187 represents a negotiations unit including all Department of Corrections (DOC) captains. FOP Lodge 183 represents a negotiations unit including all DOC lieutenants.

Robert A. Tesoroni, Jr. is employed at Bayside State Prison. He was a lieutenant from July 1, 1999 until June 29, 2002 when he was promoted to captain. In connection with his promotion, the New Jersey Department of Personnel (DOP) applied the method for recalculating salaries set by N.J.A.C. 4A:3-4.9 and moved Tesoroni from step 9 on the lieutenants' salary guide to step 8 on the captains' salary guide. Tesoroni received a salary increase of about \$6600. There is no dispute that this increase was calculated properly at that time based on the salary guides then in effect.

On October 31, 2002, an interest arbitrator issued an award setting the salaries of lieutenants for the period of July 1, 1999 through June 30, 2003. That contract was implemented on November 15, 2002. The award called for 4% retroactive salary increases on July 1 of each contract year.

On December 17, 2002, FOP Lodge 187 ratified a contract setting the salaries for captains for the same period. That contract called for the same retroactive salary increases on the same dates.

After the captains' contract was ratified, DOP reconstructed Tesoroni's salary based on N.J.A.C. 4A:3-4.9 and the retroactive

increases called for by the new contracts. Tesoroni received a salary increase of more than \$7,700, but remained on step 8 of the captains' salary guide. When Tesoroni questioned the prison's human resources department about this step placement, he was told that he would have to address his concern to DOP because DOP had done the salary reconstruction.

On January 31, 2003, Tesoroni filed a grievance asserting that his placement on step 8 violated Article XXII of the captains' contract; that article is entitled Salary Compensation Plan and Program and prohibits any reduction in the annual salary rate of employees within any classification. According to Tesoroni, his salary should have been reconstructed immediately after the lieutenants' award went into effect on November 15, 2002; such a reconstruction would have allegedly resulted in his being placed on step 9 of the captains' salary guide under N.J.A.C. 4A:3-4.9 because the step 9 salary for a lieutenant under the new award would have exceeded the step 9 salary for a captain under the old contract. Because the reconstruction was not done until after the new captains' contract had been ratified, Tesoroni remained at step 8 of the captains' guide.^{1/}

^{1/} Tesoroni's grievance does not concern the overpayment issue discussed in the employer's initial brief. We do not consider that issue further. We also note that the parties' briefs refer to an interest arbitration award covering captains, but neither the exhibits nor our records indicate that such an award was issued.

As a remedy, Tesoroni sought placement on step 9 of the captains' guide, retroactive to June 29, 2002.

An employer-designee conducted a hearing and denied the grievance. She concluded that Tesoroni had been properly slotted into step 8 of the captains' guide and that this result would have obtained even if a reconstruction had been done immediately after the lieutenants' contract took effect and had been redone after the captains' contract was ratified.

FOP Lodge 187 then 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 grievances or any contractual defenses the employer may have.

Salaries are generally negotiable and disputes over the amount of salary due are generally arbitrable. Hunterdon Cty.

Freeholder Bd. v. CWA, 116 N.J. 323 (1989). However, a statute or regulation may preempt negotiations or arbitration over a particular salary proposal or dispute if it specifically fixes a salary level and eliminates any discretion to vary it. State v. State Supervisory Employees' Ass'n, 78 N.J. 54, 80-82 (1978).

The first question before us is whether N.J.A.C. 4A:3-4.9 is such a preemptive regulation. It provides, in part:

(a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. . . . This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination. . . .

(b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

We hold that N.J.A.C. 4A:3-4.9 controls the reconstruction of Tesoroni's salary guide placement in connection with his promotion from lieutenant to captain. That regulation sets forth the formula that had to be followed both when Tesoroni was

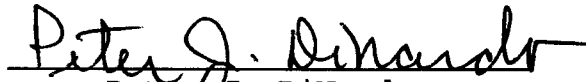
promoted and when the new salary guides for lieutenants and captains were adopted and made effective retroactively.

The next question, is whether the FOP may challenge DOP's application of that regulation through a grievance filed against the Department of Corrections. The answer is no. Any appeal from a DOP action must be made to the Merit System Board or in court. State of New Jersey (OER), P.E.R.C. No. 99-40, 24 NJPER 522 (¶29243 1998) (action of State Health Benefits Commission could not be challenged through binding arbitration with employer); State of New Jersey, P.E.R.C. No. 2000-36, 26 NJPER 12 (¶31001 1999), recon. den. P.E.R.C. No. 2000-71, 26 NJPER 171 (¶31068 2000).

ORDER

The request of the State of New Jersey (Department of Corrections) for a restraint of arbitration of the Tesoroni grievance is granted.

BY ORDER OF THE COMMISSION


Peter J. DiNardo
Acting Chairman

Acting Chairman DiNardo, Commissioners Buchanan, Katz, Sandman and Watkins voted in favor of this decision. Chairman Henderson and Commissioner Mastriani abstained from consideration. None opposed.

DATED: September 30, 2004
Trenton, New Jersey
ISSUED: September 30, 2004