

P.E.R.C. NO. 2005-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2005-017

FOP LODGE 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the City of Newark for a restraint of binding arbitration of a grievance filed by FOP Lodge 12. The grievance contests the requirement that police officers complete various forms that are allegedly not authorized by the department and that were allegedly not sent to the FOP as required by the contract. The Commission concludes that a contractual restriction on the employer's right to assign these duties would substantially limit governmental policy and grants a restraint of arbitration to the extent the grievance challenges the requirement that police officers complete certain forms. The Commission denies a restraint to the extent the grievance challenges the City's alleged obligation to provide copies of the forms to the FOP.

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 (Philip Dowdell, Assistant Corporation Counsel,
on the brief)

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

DECISION

On September 10, 2004, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by FOP Lodge 12. The grievance contests the requirement that police officers complete various forms that are allegedly not authorized by the department and that were allegedly not sent to the FOP as required by the contract.

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

The FOP represents police officers excluding superior officers. The parties' most recent collective negotiations

agreement is effective from January 1, 2003 through December 31, 2004. The grievance procedure ends in binding arbitration.

Article 29, Sections 2 provides:

Copies of all general orders, rules and regulations, and communications affecting wages, hours, and other terms and conditions of employment for employees covered by this Agreement shall be furnished to the FOP within twenty-four (24) hours of their promulgation.

On June 21, 2004, the FOP's president filed a grievance with the police director. It states:

It has been recently brought to my attention that individual precincts have developed and are utilizing forms that are not authorized by the department (a sampling of these forms is attached). The forms also have not been forwarded to the FOP as prescribed by contract. This action is in violation of the following articles of the collective bargaining agreement between the City of Newark and the Fraternal Order of Police:

- 1) Article 1, Section 1, Recognition
- 2) Article 21, Maintenance of Standards
- 3) Article 22, Sections 1 & 2, Management Rights
- 4) Article 23, Rules & Regulations
- 5) Article 29, Sections 2 & 4, FOP Privileges & Responsibilities
- 6) Article 34, Fully Bargained Provisions
- 7) Article 35, Duration

The following forms were attached to the grievance:

SCTF/Nest Tour Sheet
Safe City Task Force, N.E.S.T. Daily Motor Vehicle Stop Log
Neighborhood Stabilization Task Force Citizen Contact Log Form

South District Directed Deterrent Patrol
Schedule
Daily Summonses Tabulations Memo

The grievance was not resolved and on August 4, 2004, 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 the grievance or any contractual defenses the employer may have. We specifically do not consider the employer's assertions that the grievance is untimely or moot.

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.

The City argues that it has a managerial prerogative to require police officers to account for on-duty time by producing reports, records and notations related to police affairs and law enforcement-related duties. It further argues that completing these forms aids the City in achieving its law enforcement

objectives and ensuring the integrity of police affairs and law enforcement duties.

The FOP argues that the issuance of unauthorized work forms by various department subdivisions, without prior notice to the FOP, is a mandatory subject of negotiations. It asserts that officers will have to take additional time from their work day to complete the new forms, and presumably will be subject to discipline if the forms are not completed properly. It asserts that officers did not receive adequate training or information about the forms.

The City replies that it must know when police officers are on duty and what daily police activities or assignments they are performing and that the FOP has had the documents since at least June 2004.

The first part of this grievance focuses on duties that police officers are required to perform during their regular work hours. They have been asked to complete several forms that record tasks they regularly perform. The employees may have an interest in performing less paperwork, but that interest is outweighed by the employer's interest in having employees document events related to the performance of their duties. A contractual restriction on the employer's right to assign these duties would substantially limit governmental policy. Accordingly, we restrain arbitration over the assignment of the

form completion duties. See New Jersey State Judiciary, P.E.R.C. No. 2005-16, 30 NJPER 406 (¶131 2004) (well-established case law recognizes prerogative to assign duties within a job description).

The second part of the grievance focuses on the employer's alleged obligation to provide notice to the FOP that officers will be required to complete the disputed forms. Employees have an interest in having their union know what duties they must perform. We discern no substantial interference with any governmental policymaking if the City must send copies of such forms to the FOP.

ORDER

The request of the City of Newark for a restraint of binding arbitration is granted to the extent the grievance challenges the requirement that police officers complete certain forms. The request is denied to the extent the grievance challenges the City's alleged obligation to provide copies of the forms to FOP Lodge 12.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

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

DATED: November 23, 2004
Trenton, New Jersey
ISSUED: November 24, 2004