

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Petitioner,

-and-

Docket No. SN-2005-078

SPRINGFIELD SUPERIOR OFFICERS
ASSOCIATION, P.B.A. LOCAL 76A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Springfield for a restraint of binding arbitration of a grievance filed by a sergeant represented by the Springfield Superior Officers Association, P.B.A. Local 76A. The grievance asserts that the Township violated a provision in the parties' collective negotiations agreement entitling sergeants to higher pay when they are assigned the work of lieutenants. The Commission concludes that there is a severable compensation claim that the sergeant is in fact performing the duties of a lieutenant and should be paid accordingly. The Commission holds that the Township may argue to the arbitrator that the sergeant is in fact performing duties normally assigned to sergeants and not distinctively assigned to lieutenants.

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.

P.E.R.C. NO. 2006-15

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Appearances:

For the Petitioner, Ruderman & Glickman, P.C.,
attorneys (Mark S. Ruderman, on the brief)

For the Respondent, Mets & Schiro, LLP, attorneys
(James M. Mets, of counsel and on the brief;
Roosevelt Porter, on the brief)

DECISION

On May 20, 2005, the Township of Springfield petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by a sergeant represented by the Springfield Superior Officers Association, P.B.A. Local 76A. The grievance asserts that the Township violated a provision in the parties' collective negotiations agreement entitling sergeants to higher pay when they are assigned the work of lieutenants.

The parties have filed briefs and exhibits. The Township has submitted two certifications of its police chief, William Chisholm. These facts appear.

The SOA represents all sergeants and lieutenants. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2007. Article IV, Section B provides that sergeants assigned to perform the work of lieutenants for more than three hours in a shift shall receive lieutenants' pay from the first hour of such assignments. The grievance procedure ends in binding arbitration.

The Township's police department has two divisions: a patrol division and an investigative division. Assignments to these divisions are made at the police chief's discretion.

On December 28, 2004, the Township Committee amended the department's table of organization; the amendment specified the number of superior officers in each rank, including one lieutenant rather than two as previously specified. At that point, the patrol division consisted of 25 patrol officers supervised by a captain and five sergeants and the investigative division consisted of four investigative officers supervised by a captain and a lieutenant. The lieutenant was then transferred from the investigative division to the patrol division and Sergeant Edward J. McNany was reassigned to the investigative division to replace the lieutenant. McNany was charged with helping the captain supervise the investigative division; he has carried out that duty since February 9, 2005. The chief believed that the patrol division needed more supervision and the

investigative division was too small to require supervision by both a captain and a lieutenant. The chief believes that the patrol division now "is supervised in a manner that promotes greater accountability of patrol officers to superior command, and enhanced management of the functions of each patrolman and the division as a whole" while "the investigative division is currently provided with fully sufficient and effective supervision."

On March 8, 2005, McNany filed a grievance asserting that he had been assigned the same duties as the lieutenant who had supervised the investigative division and that he was therefore entitled to "acting up" pay under Article IV, Section B. The chief denied the grievance. On May 13, the SOA 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 merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. 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. . . . 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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of 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. No statute or regulation is alleged to preempt negotiations.

We conclude that arbitration of this grievance would not substantially limit the Township's governmental policymaking powers. The Township had a managerial prerogative to eliminate the lieutenant position in the investigative division and to determine that its supervision needs in that division require the performance of sergeant-level duties. The Township does not contest the negotiability of Article IV, Section B calling for sergeants to receive higher pay when they are assigned the work of lieutenants and the SOA does not challenge McNany's reassignment to the investigative division or seek to change his duties. The remaining questions can be considered by an arbitrator. What duties are being performed by McNany and what compensation should he receive? If, despite the organizational change, he has been assigned duties that are distinctively those of a lieutenant, then the arbitrator may enforce an agreement that he receive lieutenant's pay. See, e.g., Cherry Hill Tp.,

P.E.R.C. No. 93-6, 18 NJPER 400 (¶23180 1992) (allowing arbitration of claim that captain was entitled to out-of-title pay for performing duties of deputy chief); Borough of Rutherford, P.E.R.C. No. 92-80, 18 NJPER 94 (¶23042 1992) (allowing arbitration of claim that sergeant was entitled to out-of-title pay for performing duties lieutenant had performed as traffic coordinator); Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 App. Div. 1992) (allowing arbitration of claim that deputy chief was entitled to out-of-title pay for serving as acting chief). See generally Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997) (contractual bar against the imposition of out-of-title duties protects the integrity of the equation between the negotiated salaries and the required work). However, if McNany is performing supervision duties that are typically performed by a sergeant and not distinctly those of a lieutenant, then the arbitrator cannot effectively require the Township to fill that position with a lieutenant by requiring that the sergeant be compensated as a lieutenant.

The cases cited by the Township do not warrant a restraint of arbitration of this compensation claim. In City of Long Branch, P.E.R.C. No. 92-53, 17 NJPER 506 (¶22248 1991), a police officer sought to block his reassignment from the detective division to the patrol division, noting that he would lose a

stipend paid to detectives. We restrained arbitration over the reassignment and there was no severable compensation claim asserting that the officer was still performing the duties of the detective position. In Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985), a police union sought to prevent a consolidation of dispatching functions in the police and fire departments, noting that police officers would lose overtime opportunities. We restrained arbitration over the consolidation and there was no severable compensation claim asserting that police officers were still performing the previous overtime duties. In this case, there is a severable compensation claim asserting that McNany is in fact performing the duties of a lieutenant and should be paid accordingly. The Township may argue to an arbitrator that McNany is, in fact, performing duties normally assigned to sergeants and not duties distinctively assigned to lieutenants.

Finally, we are not bound to follow the Hearing Examiner's decision in City of Jersey City, H.E. No. 98-11, 23 NJPER 610 (¶28300 1997). In any event, we believe that permitting arbitration of the contractual claim in this case is consistent with the portion of that decision holding that certain compensation claims seeking out-of-title pay were severable from reassignment decisions flowing from a reorganization.

ORDER

The request of the Township of Springfield for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

Lawrence Henderson
Chairman

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

DATED: September 29, 2005
Trenton, New Jersey
ISSUED: September 29, 2005