

P.E.R.C. NO. 2006-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF SALEM,

Petitioner,

-and-

Docket No. SN-2005-028

SALEM POLICE OFFICERS'  
ASSOCIATION, FOP LODGE #6,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Salem for a restraint of binding arbitration of a grievance filed by the Salem Police Officers' Association, FOP Lodge #6. The grievance contests the elimination of extra-duty assignments at a State motor vehicle facility. The Commission concludes that how these on-duty police officers will be deployed is a governmental policy decision reserved to management.

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

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

DECISION

On September 15, 2005, the City of Salem petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Salem Police Officers' Association, FOP Lodge #6. The grievance contests the elimination of extra-duty assignments at a State motor vehicle facility.

The parties have filed briefs and exhibits. The City has submitted the certification of Police Chief Ronald Sorrell. The FOP has submitted the affidavit of FOP Staff Representative Edmund Giordano. These facts appear.

The FOP represents all full-time police officers. The parties' collective negotiations agreement is effective from January 1, 2004 through December 31, 2006. The grievance procedure ends in binding arbitration.

The City entered into an agreement with the New Jersey Motor Vehicle Commission (MVC) to provide police officers at the local motor vehicle facility in Mannington Township. That facility is open to the public six days a week. Mannington Township does not have its own police force.

When the City agreed to provide the police services, FOP Representative Giordano recommended that the work be done under the parties' extra-duty policy because the work was outside the City. According to Giordano, the police chief told FOP president Leon Daniels that it was an extra-duty assignment and the FOP should handle it.

The parties' extra-duty agreement provides that officers receive \$45 per hour and the City receives \$5 per hour for administrative costs. No officer is required to perform extra duty.

The contract with the MVC provided that the City would be paid \$105,000. Assigning officers under the extra-duty policy costs \$116,820 per year. Giordano states that the costs exceeded the contract price because the City failed to include the \$5 administrative fee in its agreement with the MVC. The Mayor and

Council determined that if they instead assigned day shift officers, the City could afford to hire two extra police officers. The City Council passed Resolution 04-36 authorizing the Mayor to sign the contract with the MVC and providing that the MVC would be staffed by officers already assigned to the day shift, with overtime to fill any gaps, and that the extra-duty policy would not be used. On April 1, 2004, the City's agreement with the MVC became operational.

The police chief thought that the extra-duty policy was to be used to pay for coverage at the MVC and the assignment began as extra-duty work. When the chief was notified that day shift officers were to be used, he notified department personnel of the change. The City has not added any police officers to the department.

On June 23, 2004, the FOP filed a grievance. The grievance claims that the City violated the parties' agreement by eliminating the extra-duty assignments. The grievance states, in part:

An agreement between the City and the Association/FOP dictated that officers assigned to the detail would receive their extra-duty pay rate of \$45.00 per hour. Officers began working this detail on April 1, 2004 until June 22, 2004 and did receive the \$45.00/per hour rate. To work the detail, off duty officers signed up on a voluntary basis in a book that was posted in the dispatch office. In the event that no officers were available or no officers would come in to work it, an officer from the shift

was detailed to cover until an off-duty replacement could be found. This rarely occurred.

On June 22, 2004, a posted notification was distributed by Lieutenant William Madara directing that off-duty officers will no longer participate in working at the DMV and that the Chief Executive Officer will assign this detail to on duty, sworn personnel as a managerial decision. It further stated that one of the on-duty detectives will be assigned to work from 0800-1400 and then one from 1400 until closing. The normal investigation unit staffing calls for two detectives to be assigned to work from 0600-1400 and 1400-2200 Monday through Friday. The change further deprives officers of anticipated earnings, causes an increased workload on investigative personnel, and though not negotiable, represents a poor utilization of resources by the City.

The grievance was not resolved and on July 19, 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 merits of the grievance or any contractual defenses the employer might 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.

The City argues that it has a managerial prerogative to assign day shift officers to the local motor vehicle office regardless of whether the work is outside the City limits. The FOP argues that this case involves a unilateral decision to remove an extra duty-assignment; the work being performed is not within the City limits; the City's failure to negotiate the proper pay rate with the MVC should not permit it to renege on its agreement with the FOP; and the City has not cited any cases that support the elimination of an extra duty assignment or its transformation to a regular work assignment.

In Borough of Belmar, P.E.R.C. No. 2003-52, 29 NJPER 30 (¶10 2003), we considered the legal arbitrability of a grievance in a similar dispute. The parties had an extra-duty agreement and the Borough assigned an on-duty officer to direct traffic around a paving project rather than use an off-duty officer pursuant to the extra-duty agreement. We held that enforcement of an alleged agreement not to deploy an on-duty police officer would substantially limit governmental policymaking powers. We added that the police chief had a right to decide when an on-duty officer would be assigned to a public safety post. We see no basis to distinguish Belmar's application of Paterson's

negotiability test. How on-duty police officers will be deployed is generally a governmental policy decision reserved to management. City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998). The fact that the deployment is outside the City's boundaries is legally irrelevant. The deployment of these on-duty officers, thus eliminating the need for extra-duty assignments, cannot be challenged through binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: December 15, 2005

Trenton, New Jersey