

P.E.R.C. NO. 2006-68

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DIVISION OF STATE POLICE),

Petitioner,

-and-

Docket No. SN-2006-030

STATE TROOPERS SUPERIOR  
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

\_\_\_\_\_The Public Employment Relations Commission grants the request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration of a grievance filed by the State Troopers Superior Officers Association. The grievance asserts that the State violated the parties' age discrimination clause by requiring lieutenants seeking promotion after September 1, 2004 to have a bachelor's degree. The Commission holds that the State is free to require a bachelor's degree for promotion to captain. The Commission finds that the STSOA's allegation that the degree attainment date discriminates on the basis of age is not legally arbitrable and must be presented in another forum.

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, Zulima V. Farber, Attorney General  
(Sally Ann Fields, Senior Deputy Attorney General, on  
the brief)

For the Respondent, Loccke & Correia, attorneys  
(Merick H. Limsky, on the brief)

DECISION

On October 11, 2005, the State of New Jersey (Division of State Police) petitioned for a scope of negotiations determination. The State seeks a restraint of binding arbitration of a grievance filed by the State Troopers Superior Officers Association. The grievance asserts that the State violated the parties' age discrimination clause by requiring lieutenants seeking promotion after September 1, 2004 to have a bachelor's degree.

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

The Association represents lieutenants. The parties' collective negotiations agreement is effective from July 1, 2004 through June 30, 2008. The grievance procedure ends in binding arbitration. Article XVI is entitled "Non-discrimination." It provides, among other things, that there shall be no discrimination because of age.

On December 9, 1996, S.O.P. C-58, "Educational Standards for Promotion," took effect. That protocol provided that beginning September 1, 2004, officers seeking promotion to the rank of Captain and above must have a bachelor's degree.

On July 29, 2004, the SOA filed this grievance:

The State Troopers Superior Officers Association (SOA) grieve the Bachelor's Degree requirement for consideration to the rank of captain in SOP C-58 effective September 1, 2004, as arbitrary, capricious and discriminatory and in violation of the agreement between the State and the SOA, more specifically Article XVI, Non-Discrimination, and Article XXVI.A, Complete Agreement. No other enlisted member either above or below the rank of lieutenant has any such requirement for promotion until September 1, 2006.

On July 30, 2004, the superintendent concluded that the grievance was untimely; that it involved the managerial prerogative to determine promotional criteria; and that the subject of promotions is contractually excluded from the grievance procedure.

On August 16, 2004, the Association demanded arbitration. It seeks to present this issue to an arbitrator: "Did the employer discriminate against the members of the Association in violation of the collective bargaining agreement by applying the college requirement in a discriminatory manner based upon age." 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 cannot consider the contractual merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations is broader for police officers and firefighters than for other public employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these tests for determining the negotiability of a subject affecting police officers:

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 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. [87 N.J. at 92-93; citations omitted]

Arbitration of grievances is 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 (¶1111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

The State argues that setting promotional criteria is a managerial prerogative and is not legally arbitrable. The SOA concedes that the superintendent has such a prerogative, but argues that the degree requirement violates the discrimination

clause of the parties' agreement because the members, due to their age, would be "summarily excluded or severely prejudiced from being promoted." It maintains that to attain the rank of lieutenant ordinarily requires a member to be with the Division for at least 18 years and that the requirement to have a degree to be promoted to captain is discriminatory due to the limited time for them to obtain one.

State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981), distinguishes between non-negotiable promotional criteria and negotiable promotional procedures. Commenting on criteria, the Court observed:

[The State] is free to establish standards involving its own assessments of subjective factors -- e.g., intelligence, courage, ability to deal with people -- as well as objective criteria -- e.g., seniority, experience -- and to attribute as high or low a percentage to the subjective or objective criteria, respectively, as it deems fit. It may also establish different standards and values relating to each type of job opening. [Id. at 90; emphasis supplied]

The State is thus free to require a bachelors degree for promotion to captain and an arbitral challenge to that requirement would substantially limit government's policymaking powers. The STSOA's allegation that the degree attainment date discriminates on the basis of age is not legally arbitrable and must be presented in another forum. See Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983) (claims of

discrimination in promotion decisions not legally arbitrable); City of Newark, P.E.R.C. No. 2005-2, 30 NJPER 294 (¶102 2004), aff'd 31 NJPER 287 (¶112 App. Div. 2005) (restraining arbitration of claim that transfers and reassignments were racially discriminatory). Accordingly, we will restrain arbitration.

ORDER

The request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: March 30, 2006

Trenton, New Jersey