

P.E.R.C. NO. 2006-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-2006-053

JERSEY CITY POLICE OFFICERS  
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

\_\_\_\_\_The Public Employment Relations Commission grants the request of the City of Jersey City for a restraint of binding arbitration of a grievance filed by the Jersey City Police Officers Benevolent Association. The grievance asserts that the City violated the parties' collective negotiations agreement when it delayed the effective date of promotions of 24 police officers to detective until two weeks after they were sworn in. The Commission holds that the City has a managerial prerogative to determine who will be promoted to detective and whether that prerogative encompasses deciding when officers will begin performing detective duties. The Commission further adds that a compensation claim cannot be severed from exercise of the prerogative.

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, Schwartz, Simon, Edelstein, Celso & Kessler, LLP, attorneys (Rachel A. Davis, on the brief)

For the Respondent, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, on the brief)

DECISION

On January 19, 2006, the City of Jersey City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Jersey City Police Officers Benevolent Association. The grievance asserts that the City violated the parties' collective negotiations agreement when it delayed the effective date of promotions of 24 police officers to detective until two weeks after they were sworn in.

The parties have filed briefs and exhibits. The City has filed its police chief's certification. The POBA has submitted its president's certification. These facts appear.

The POBA represents non-supervisory police officers. The parties' most recent collective negotiations agreement is effective from January 1, 1999 through December 31, 2001. Article 41 provides that its terms remain in effect until the execution of a new agreement. The parties have not yet executed a new agreement. The grievance procedure ends in binding arbitration.

In December 2004, the City decided to promote 24 police officers to detective, effective January 1, 2005. However, the officers were sworn in as detectives and given their detective badges on December 16, 2004. The chief states that the delayed effective date for the promotions was necessary so that the City could stay within its budget and ensure that all shifts were adequately covered throughout December.

The chief states that the affected officers and the POBA were told and understood before the swearing-in ceremony that the promotions would not be effective until January 1 and that they would not perform detective duties or receive detective pay before then. The chief also asserts that the POBA did not object. The POBA denies that it agreed to waive detective pay for the two-week period before January 1.

There is no assertion that the officers were assigned to detective units before January 1 or given duties typically performed by detectives but not patrol officers. The POBA's

president states that detectives often perform many, if not all, of the same duties as patrol officers and that certain of the 24 promoted officers continued to perform the same duties and functions after January 1 as they did before.

On December 22, 2004, the POBA filed a grievance in the form of a letter from the POBA's attorney. The letter asserts, in part, that the 24 officers were contractually entitled to be paid as detectives as soon as they were sworn in.

The grievance was not resolved and the POBA 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.

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). 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 preemption claim is made.

The City argues that it has a non-negotiable managerial prerogative to determine the effective date of promotions. The POBA accepts the City's right to schedule swearing-in ceremonies, but argues that the City was required to pay detective pay once the officers were sworn in.

The City has a managerial prerogative to determine who will be promoted to detective and when. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); Paterson. That prerogative encompasses deciding when officers will begin performing detective duties. Under the circumstances presented, the POBA's claim for compensation cannot be severed from the City's prerogative to decide that it did not need or want the officers to begin performing detective duties until January 1, 2005. The holiday season required scheduling the swearing-in ceremony before January 1 if the officers were to be assigned to detective duties on that date and there is no claim that the officers were

in fact assigned to the detective bureau or performed duties unique to detectives before then. Compare State of New Jersey (Div. of State Police), P.E.R.C. No. 97-105, 23 NJPER 179 (¶28090 1997) (claim for increased pay was not severable from superintendent's decision not to grant promotion on certain date). Accordingly, we will restrain binding arbitration of the POBA's claim for detective pay before January 1, 2005.

ORDER

The request of the City of Jersey City for a restraint of binding arbitration of the POBA's claim for detective pay before January 1, 2005 is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: March 30, 2006

Trenton, New Jersey