

P.E.R.C. NO. 2007-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-2006-089

JERSEY CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Jersey City Police Superior Officers Association for reconsideration of P.E.R.C. No. 2007-7. In that decision, the Commission granted, in part, the request of the City of Jersey City for a restraint of binding arbitration of grievances filed by the PSOA. The grievances concern assignment and out-of-title pay issues arising from the reassignment of lieutenants, captains and sergeants. The Commission granted a restraint on several claims, including that sergeants at the desk are entitled to out-of-title lieutenants' pay. The Association seeks reconsideration of that holding. It claims that there is a written agreement to pay sergeants additional pay if they serve as either Tour Commanders or Desk Officers. The Commission grants reconsideration and holds that the parties could have legally agreed that sergeants performing Tour Command Desk Officer duties would be paid at the lieutenants' rate even though those duties have been determined to be sergeants' duties. The Commission modifies its order and denies a restraint of arbitration over this claim.

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 (Stefani C. Schwartz, on the brief)

For the Respondent, Loccke, Correia, Schlager, Linsky & Bukosky, attorneys (Michael A. Bukosky, on the brief)

DECISION

On August 16, 2006, the Jersey City Police Superior Officers Association moved for reconsideration of P.E.R.C. No. 2007-7, 32 NJPER 278 (¶115 2006). In that decision, we granted, in part, the request of the City of Jersey City for a restraint of binding arbitration of grievances filed by the PSOA. The grievances concern assignment and out-of-title pay issues arising from the reassignment of lieutenants, captains and sergeants. We granted a restraint to the extent the grievances claim that the City must assign lieutenants to the day tour and to desk duty; sergeants should be reassigned from the desk to first-line supervision; sergeants at the desk are entitled to out-of-title pay; and

sergeants should be paid overtime to cover first-line supervisory functions. We denied a restraint to the extent the grievances claim that lieutenants are entitled to out-of-title pay for work performed as acting captains.

The PSOA seeks reconsideration of the aspect of our decision addressing its claim for compensation for sergeants assigned to tour commander or desk duty. It claims that there is a written agreement to pay sergeants additional pay if they serve as either Tour Commanders or Desk Officers. That Stipulation of Settlement was drafted in March 1998 to settle a number of grievances, including grievances classified under the heading of "Out-of-Title Pay Issues." The relevant provision states:

Desk Officers/Lieutenants/Captains

1. The grievants in AR-96-289 who claimed out-of-title pay for service as a Desk Officer will receive a portion of the lump sum payment in settlement of the allegation that they were entitled to Lieutenant's pay.
2. Prospectively, it is understood and agreed that Sergeants will receive out-of-title pay at the Lieutenant's pay rate only if they are designated as Tour Commander. The position of Tour Commander is pay-rated at Lieutenant's rate. If a Lieutenant is on duty, then the assignment of Tour Commander stays with him, even if he periodically leaves the desk. If two Sergeants and no Lieutenants are on duty, then one of the Sergeants will be designated as Tour Commander.

3. To be entitled to Captain's pay, a Lieutenant must be formally assigned to replace a Captain.

We ruled that the City had a non-negotiable managerial prerogative to reassign sergeants to Tour Commander/Desk Officer positions and to reassign lieutenants who had been Tour Commander/Desk Officers to other duties and that therefore, sergeants are not entitled to out-of-title pay. Our decision was based, in part, on a March 23, 2006 New Jersey Department of Personnel ("DOP") classification review that found that the duties of Tour Commander/Desk Sergeant were commensurate with the job description for police sergeant.

The PSOA states that it does not challenge the City's ability to assign sergeants to desk duty. Instead it claims that extra compensation was negotiated for the sergeants who perform a unique task and that our precedent supports permitting arbitration of its contractual claim. The PSOA further claims that we should not rely on the DOP determination because out-of-title work for DOP purposes is different from contractual out-of-title work. The PSOA contends that grievances concerning the latter type of out-of-title work are arbitrable. It further contends that we overlooked conflicting precedent and that extraordinary circumstances warrant reconsideration.

The City argues that the PSOA has failed to specify any extraordinary circumstances warranting reconsideration. It

asserts that the PSOA continues to argue that the sergeants are performing out-of-title duties and that the parties have to negotiate over the pay rate for sergeants when they perform their duties. Finally, the City states that it does not dispute the existence of the Stipulation of Settlement, makes no comment on the contents of the document, and was not precluded from reorganizing the police department in a manner that changes the terms of the agreement because any such preclusion would have improperly limited its ability to reorganize the department when it deemed such action to be operationally necessary. It accordingly contends that the duties in the Stipulation of Settlement are no longer applicable.

Reconsideration will be granted only in extraordinary circumstances. N.J.A.C. 19:13-3.11; N.J.A.C. 19:14-8.4. The PSOA submitted the Stipulation of Settlement to us in the initial proceeding, but we did not address it as an alleged independent source of right. We assumed instead that the PSOA's claim for compensation flowed directly from the claim that sergeants were performing out-of-title lieutenants' work. Under these circumstances, we will reconsider this issue.

We have long held that unions may seek compensation for employees performing work of a higher title. See, e.g., Springfield Tp., P.E.R.C. No. 2006-15, 31 NJPER 294 (¶115 2005) (permitting arbitration of severable compensation claim that

sergeants were performing lieutenants' duties). However, in P.E.R.C. No. 2007-7, we determined that the employer had a non-negotiable prerogative to assign Tour Commander/Desk Officer duties to sergeants because those duties had been determined to be within the sergeants' DOP job description. We therefore held that sergeants were not entitled to seek out-of-title pay as lieutenants for performing Tour Commander/Desk Officer duties.

The only remaining scope of negotiations question is whether the parties could have legally agreed that sergeants performing Tour Commander/Desk Officer duties would be paid at the lieutenants' rate even though those duties have been determined to be sergeants' duties.^{1/} The answer is yes.

Labor and management may negotiate agreements providing for extra pay for special or extra duties within a job classification: for example, detective stipends to patrol officers and team leader stipends to teachers. We thus conclude that the PSOA may pursue its claim for additional compensation for sergeants assigned as Tour Commander/Desk Officers.

The City contends that the parties' 1998 Stipulation on the nature of the duties to be performed by superior officers is no longer applicable. However, we lack the authority to weigh the

^{1/} The PSOA characterizes this as "contractual out of title" as opposed to out of title for DOP purposes. To minimize confusion, we will use the term "extra pay for extra duties" rather than "contractual out of title."

merits of the contractual claims or defenses by interpreting the 1998 Stipulation and applying that interpretation in light of subsequent events, such as the 2005 reorganization or the 2006 DOP ruling. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). The contractual claim for extra pay for extra duties may be arbitrated because it does not significantly interfere with the employer's asserted prerogative, in this case to reassign lieutenants off the day tour to improve supervision. Local 195, IFPTE v. State, 88 N.J. 393 (1982). Accordingly, we modify our initial decision to deny a restraint of binding arbitration over the claim that sergeants assigned as Tour Commander/Desk Officer should be paid at the lieutenants' rate for performing duties within their job description.^{2/}

ORDER

Reconsideration is granted. The order in P.E.R.C. No. 2007-7 is modified to deny a restraint of arbitration over the claim that sergeants assigned as Tour Commander/Desk Officer are

^{2/} If the PSOA cannot prove the existence of an agreement to pay these sergeants at the lieutenants' rate independent of their performing out-of-title lieutenants' duties, an arbitrator cannot order the sergeants performing such duties be paid as lieutenants. See Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991). If the arbitrator finds that sergeants assigned as Tour Commander/Desk Officer are entitled to lieutenants' pay because they are performing out-of-title lieutenants' duties, the City may refile its petition and we will declare the entitlement found to be not legally enforceable.

entitled to be paid at the lieutenants' pay rate for performing duties within their sergeants' job description.

BY ORDER OF THE COMMISSION

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

ISSUED: November 21, 2006

Trenton, New Jersey