

P.E.R.C. NO. 2007-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-2007-044

JERSEY CITY POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

_____The Public Employment Relations Commission grants, in part, the request of the City of Jersey City for a restraint of binding arbitration of a grievance filed by the Jersey City Superior Officers Association. The grievance alleges that sergeants and lieutenants have respectively been required to work out-of-title as lieutenants and captains and asks that the police chief respond to the PSOA's inquiries and grievances concerning such assignments and that promotions be made so as to eliminate the need for out-of-title work. The Commission restrains binding arbitration to the extent the grievance demands that officers be promoted. The request for a restraint is otherwise denied.

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, Rachel A. Davis and Mark H. Aronowitz, on the brief)

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

DECISION

_____On January 25, 2007, 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 Superior Officers Association. The grievance alleges that sergeants and lieutenants have respectively been required to work out-of-title as lieutenants and captains and asks that the police chief respond to the PSOA's inquiries and grievances concerning such assignments and that promotions be made so as to eliminate the need for out-of-title work. We restrain binding arbitration to the extent the grievance demands that officers be promoted.

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

The PSOA represents all superior officers from the rank of sergeant through the rank of inspector. The parties' collective negotiations agreement is effective from January 1, 2002 through December 31, 2005. Negotiations have not produced a successor agreement so the PSOA has petitioned for interest arbitration. Article 20 of the current agreement is the grievance procedure, which ends in binding arbitration. Article 26 is entitled Temporary Appointments. Section 1 provides:

The practice of appointing employees to higher rank in an acting capacity is discouraged, and it is agreed that vacancies in such higher ranks shall be filled as soon as possible as provided by law.

On January 28, 2006, the PSOA filed a grievance alleging that many sergeants and lieutenants have been working out of title in the ranks of lieutenant and captain in violation of Article 26 and that the police chief had violated the grievance procedure by not timely replying to the PSOA's inquiries about the alleged violations of Article 26. The grievance noted that the officers had received out-of-title pay for these assignments, but asked for this relief: "the Chief should honor the contract by replying in a timely fashion to an official request [and] [p]romotions should be made so as to eliminate the need for members of this Association to work out of title."

On April 7, 2006, the PSOA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.
[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may 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. As this dispute arises in the context of a grievance alleging contractual violations, 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 to have been violated is preempted

or would substantially limit government's policymaking powers. No statute or regulation is asserted to preempt negotiations.

The City argues that it has a non-negotiable prerogative to decide whether or not to promote officers and when such promotions will occur. Paterson so held. See also State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); Rutgers, The State Univ., P.E.R.C. No. 2007-37, 32 NJPER 394 (¶163 2006). We deny the PSOA's unsupported request for an evidentiary hearing. See N.J.A.C. 19:13-3.5 and 3.6 (all pertinent facts must be supported by certifications based upon personal knowledge and a request for an evidentiary hearing must detail substantial and material disputed factual issues). Further, even if the motivation for not promoting officers is a financial one, as the PSOA asserts, Paterson makes clear that saving money is an acceptable and non-negotiable reason for not filling promotional positions.

The PSOA asserts that the chief's alleged violation of the grievance procedure presents a negotiable and legally arbitrable claim. We agree. A majority representative may negotiate for grievance procedures requiring timely responses to its grievances and specific explanations of personnel decisions. State Supervisory (promotional procedures are mandatorily negotiable); City of Summit, P.E.R.C. No. 2006-94, 32 NJPER 227 (¶94 2006) (negotiable procedures under State Supervisory include an

explanation for promotion denials). The City may argue to the arbitrator, as it has to us, that the grievance procedure did not require the chief to respond to the PSOA's inquiries.

ORDER

The request of the City of Jersey City for a restraint of binding arbitration is granted to the extent the grievance seeks promotions for officers. The request is otherwise denied.

BY ORDER OF THE COMMISSION

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

ISSUED: May 31, 2007

Trenton, New Jersey