

P.E.R.C. NO. 2008-60

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2008-048

NEWARK FIRE OFFICERS UNION  
LOCAL 1860, IAFF, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Newark for a restraint of binding arbitration of a grievance filed by the Newark Fire Officers Union Local 1860, IAFF, AFL-CIO. The grievance asserts that three officers out on sick leave or on light duty assignments were contractually entitled to the stipends they received while on active duty. The Commission holds that the claims that the officers should have been paid hazardous duty stipends from the time they went out on sick leave until they returned to active duty does not substantially limit the City's policymaking powers or its ability to reassign personnel to maintain staffing levels in the firefighting division.

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, Aney K. Chandy, Corporation Counsel  
(Madge R. Buckle, Assistant Corporation Counsel, on the  
brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum  
& Friedman, attorneys (Genevieve M. Murphy-Bradacs, on  
the brief)

DECISION

On December 31, 2007, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Newark Fire Officers Union Local 1860, IAFF, AFL-CIO. The grievance asserts that three officers out on sick leave or on light duty assignments were contractually entitled to the stipends they received while on active duty. We deny the City's request for a restraint of this compensation claim.

The parties have filed briefs and exhibits. The City has filed the certifications of its fire director and fire chief.

Local 1860 has filed the certification of its president. The exhibits and certifications reveal the following facts.

Local 1860 represents fire captains, battalion chiefs and deputy chiefs. The parties' January 1, 1999 through December 31, 2003 agreement has been modified by two memoranda of agreement, the last of which is effective from January 1, 2005 through December 31, 2008.

Article 7.06 of the 2005-2008 agreement is entitled "Hazardous Duty Pay." It provides:

Effective January 1, 2007, all members assigned to units that are actively engaged in fire suppression (actually fighting fires), plus two (2) union officials assigned to the office on full release, shall receive hazardous duty pay in the amount of \$1,253.00 annually. Payment shall be made on the first non-pay Friday in December. Members who do not serve the full year in the Firefighting Division shall have their hazardous duty pay pro-rated.

In the prior agreements, the first sentence of Article 7.06 provided:

All members of Firefighting Divisions shall receive hazardous duty pay in the amount of \$953.00 per year.

Article 9.05 is entitled sick leave and provides:

Sick leave shall be in accordance with the provisions of N.J.S.A. 40A:14-137. The Director shall establish after consultation with the Union, rules and regulations governing the application of this statute. The City shall continue its current practice of providing the statutory maximum of up to one year of salary and benefits for

individuals off-duty on sick leave or injury leave. Employees will be required to provide a note from a physician for any absence due to illness longer than two (2) consecutive working shifts of twenty-four hours.

Article 10.01 is entitled Prevailing Rights. It provides:

All rights, privileges, and working conditions enjoyed by the employees at the present time, which are not included in this Agreement, shall remain in full force, unchanged and unaffected in any manner, during the term of this Agreement unless changed by mutual written agreement.

The department is split into an administrative division and a field operations (firefighting) division. All fire officers assigned to the firefighting division receive a stipend and/or overtime opportunities.

Battalion Chief Walter Brownlee and Captains Raynard Adams and Anthony Castelluccio were in the firefighting division before going out on sick leave beginning in 2006 and ending in 2007. In early February 2007, after their sick leaves had begun, the City reassigned them to the administrative division. Brownlee and Adams were given light duty assignments when their sick leaves ended. All eventually returned to the firefighting division. Brownlee retired on December 1, 2007.

While assigned to the firefighting division, Brownlee earned an annual hazardous duty pay stipend and a tour commander stipend; Castelluccio and Adams earned hazardous duty pay stipends. While they were on sick leave or light duty, they were

not paid these stipends. On March 1, 2007, the Association filed a grievance alleging a violation of Article 10, Prevailing Rights and other applicable contract articles. The grievance stated:

The facts pertaining to the grievance are: On February 2, 2007 Battalion Chief Walter Brownlee, Captain Anthony Castellucio and Captain Raynard Adams were permanently transferred due to illness or injury to Administrative Duty while recovering at home. The Fire Director advised the union that this new sick leave policy will apply to all fire officers who are out sick or injured for more than 30 days. Also, the transferred officers will no longer be entitled to stipends they otherwise would have received while on sick or injury leave as in the past due to the administrative assignments including overtime opportunities.

Local 1860 is not contesting the reassignments. It seeks a ruling from an arbitrator that the reduction in compensation while out on sick leave violated the parties' agreement.<sup>1/</sup> On May 22, 2007, Local 1860 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,

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<sup>1/</sup> When he retired, Brownlee received the stipends withheld during his sick leave and light duty work. The NFOU no longer seeks any compensation for him.

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]

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth the tests for determining whether a dispute involving a police or fire officer is within the scope of collective negotiations. Under Paterson, arbitration will not be restrained unless the agreement alleged is preempted or would substantially limit government's policymaking powers.

The City argues that it has a non-negotiable prerogative to temporarily reassign any officers on long-term sick leave and/or light duty to the administrative division and simultaneously reassign officers on regular duty to the firefighting division to ensure optimal distribution of staff and to further the goal of providing adequate fire prevention services. It also argues that active duty status in the firefighting division is a precondition to receiving the extra compensation sought by the grievance. Local 1860 responds that compensation paid to employees on sick leave is mandatorily negotiable.

Local 1860 is not challenging the City's decision to reassign other fire officers into the positions that were vacant during the sick leaves and light duty assignments. It asserts

that the grievance makes a specific claim, severable from the City's decision to reassign its personnel: while the officers were on sick leave or light duty, they were contractually entitled to be compensated based on their assignments at the time their leaves began (i.e. active duty in the firefighting division).<sup>2/</sup>

Our holding in Pennsauken Tp., P.E.R.C. No. 88-41, 13 NJPER 821 (¶18316 1987), is instructive and applicable. There we stated:

This dispute only involves the compensation due an employee as a sick leave benefit. Arbitrating the rate of pay an employee should receive under a sick leave benefits clause for the entire sick leave term does not significantly interfere with the employer's prerogative to transfer that employee upon return to work or to fill that employee's position with another officer during the period of sick leave. [13 NJPER at 822]

Even assuming that time spent on light duty is different than time spent on sick leave, a contractual claim for active duty or rank stipends after a reassignment is also legally arbitrable. In City of Elizabeth, P.E.R.C. No. 2007-16, 32 NJPER 321 (¶133 2006), we held that a grievance asserting that the City had agreed to continue to pay detective stipends to officers it

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<sup>2/</sup> Although the grievance refers to overtime opportunities, the NFOU's brief and the certification of its president discuss only the fire officers' claims to contractual stipends. Accordingly, we do not rule on the legal arbitrability of a claim for missed overtime opportunities.

had reassigned to the patrol division would not substantially limit the employer's policymaking powers. See also Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991).

We hold that the claims that Adams and Castellucio should have been paid hazardous duty stipends from the time they went out on sick leave until they returned to active duty does not substantially limit the City's policymaking powers or its ability to reassign personnel to maintain staffing levels in the firefighting division. We make no comment on whether the officers are contractually entitled to those stipends.

ORDER

The City of Newark's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Buchanan and Joanis were not present.

ISSUED: April 24, 2008

Trenton, New Jersey