

P.E.R.C. NO. 2010-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-2009-074

POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCAL 109,

SYNOPSIS

The Public Employment Relations Commission denies the County of Hudson's request for a restraint of binding arbitration of a grievance filed by Police Benevolent Association Local 109. The grievance asserts that officers in the police academy did not receive the appropriate compensation. The County argued that trainees are not members of the PBA unit. The Commission holds that an arbitrator may determine if the trainees are included in the unit and, if so, the rate of compensation to which they are entitled.

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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POLICEMEN'S BENEVOLENT ASSOCIATION  
LOCAL 109,

Respondent.

Appearances:

For the Petitioner, Donato Battista, Hudson County  
Counsel (Louis C. Rosen, Deputy County Counsel)

For the Respondent, Lindabury, McCormick, Estabrook &  
Cooper, P.C., attorneys (Eric B. Levine, on the brief)

DECISION

On May 1, 2009, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association Local 109. The grievance asserts that officers in the police academy (trainees) did not receive the appropriate compensation while attending the academy.

The parties have filed briefs and exhibits. The County filed certifications from its Personnel Officer and Payroll Supervisor. These facts appear.

The parties' collective negotiations agreement is effective from January 1, 2004 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article I provides that the County recognizes the PBA as the exclusive representative for "all corrections officers below the rank of Sergeant who are assigned to the Employer's Division of Corrections."

On October 1, 2007, the PBA filed a grievance challenging the compensation provided to trainees who attended the academy between March 10, 2007 and July 13, 2007. The grievance alleges that the County unilaterally reduced trainee compensation in violation of the negotiated salary guide. The grievance was not resolved and the PBA 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 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. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). 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:

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]

Because this dispute involves a grievance, arbitration 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 (¶111 App. Div. 1983).

The County asserts that trainees are not included in the PBA's negotiations unit and, therefore, it is not required to negotiate trainee compensation and trainees do not have access to contractual binding arbitration. The County points to the absence of the trainee title from Article I of the collective negotiations agreement and the parties' past dealings. The County further asserts that the PBA does not collect membership cards from trainees until they graduate from the academy, does not represent trainees in grievances or disciplinary proceedings, and has never collected dues or representation fees from trainees.

The PBA responds that the starting salary for corrections officers is a mandatorily negotiable and arbitrable compensation issue. It further responds that the County's arguments do not address the abstract issue of negotiability, but only the factual dispute that an arbitrator may consider.

The County replies that the instant petition is not challenging the negotiability of compensation, but trainees'

access to binding arbitration because they are not included in the PBA's negotiations unit.

We have previously held that an arbitrator may interpret a contractual recognition clause and determine whether an employee is covered by the agreement. See City of Hoboken, P.E.R.C. No. 96-16, 21 NJPER 348 (¶26214 1995), aff'd 23 NJPER 140 (¶28068 App Div. 1996); City of Hoboken, P.E.R.C. No. 2010-40, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_ 2009); Sussex Cty. Voc. School Bd. of Ed., P.E.R.C. No. 2005-17, 30 NJPER 407 (¶132 2004); Spring Lake Borough, P.E.R.C. No. 2003-38, 28 NJPER 579 (¶33180 2002). We reach the same result here.

This dispute over the reach of the existing contractual recognition clause does not present a negotiability issue and the PBA's compensation claim is legally arbitrable. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 7 (1973). An arbitrator may determine if the trainees are included in the unit and, if so, the rate of compensation to which they are entitled.

ORDER

The request of the County of Hudson for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Joanis and Watkins voted in favor of this decision. None opposed. Commissioners Colligan and Fuller recused themselves.

ISSUED: December 17, 2009

Trenton, New Jersey