

P.E.R.C. NO. 2010-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BLOOMFIELD,

Petitioner,

-and-

Docket No. SN-2010-005

BLOOMFIELD PBA LOCAL #32,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the Township of Bloomfield's request for a restraint of binding arbitration of a grievance filed by Bloomfield PBA Local No. 32. The grievance asserts that the Township violated the parties' collective negotiations agreement when it reduced the pay of two police officers after transferring them from the detective division to the patrol division. The Commission permits arbitration over the compensation claim that is severable from the transfer decision.

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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BLOOMFIELD POLICEMEN'S BENEVOLENT
ASSOCIATION, INC., LOCAL NO. 32,

Respondent.

Appearances:

For the Petitioner, Campbell Ortiz, LLC, attorneys
(Wilfred J. Ortiz, of counsel); Weiner Lesniak, LLP,
attorneys (Brian J. Aloia, on the brief)

For the Respondent, Klatsky, Sciarrabone & DeFillippo,
attorneys (David J. DeFillippo, on the brief)

DECISION

On July 20, 2009, Township of Bloomfield petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Inc., Local No. 32. The grievance asserts that the Township violated the parties' collective negotiations agreement when it reduced the pay of two police officers after transferring them from the detective division to the patrol division. We will permit arbitration over the compensation claim that is severable from the transfer decision.

The parties have filed briefs and exhibits. The PBA has submitted the certification of a Township police officer and PBA delegate. The Township has submitted the certification of its chief of police. These facts appear.

The Township is a Civil Service jurisdiction. The PBA represents all full-time police officers below the rank of sergeant. The parties' collective negotiations agreement is effective from January 1, 2006 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article XXIII.B., "Salaries" provides that officers assigned to the Criminal Investigation Division:

[S]hall receive the police officer's salary for the first one hundred twenty (120) days following said employee's assignment to such position. If the employee successfully completes the probationary period, he shall thereafter receive the salary as set forth above.

Article XXVI is a "just cause" provision allowing discharges, reprimands, reductions in rank or compensation, and deprivations of occupational advantages to be grievable, provided recourse is not available under Civil Service law.

On March 2, 2009, Chief Michael Leonard issued an order reassigning several officers. Among them were two officers who had previously been assigned as detectives and were reassigned by the Chief to the patrol division. The PBA delegate asserts that both officers had completed their probationary periods, were

receiving pay in accordance with the detective pay scale, and were the subject of separate resolutions, passed by the Township's Mayor and Council, appointing them to the position of detective. The PBA delegate asserts that, after the reassignments, the Mayor and Council adopted a resolution reducing the base salaries of the former detectives to the level of a top paid police officer.

On April 29, 2009, the PBA filed a Step 2 grievance with the Chief. Quoting Article XXIII.B., the PBA asserts that once an officer assigned as a detective has completed a probationary period, "he shall thereafter receive the salary as set forth [in the salary guide] above." The grievance claims that reducing the compensation of the former detectives violated the agreement and was a reduction in compensation without just cause. On May 15, after the grievance was denied by the Mayor and Council, the PBA demanded binding 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:

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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.

[Id. at 92-93; citations omitted]

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 is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

The Township argues that: it has a non-negotiable prerogative to transfer police officers; the officers were only entitled to additional compensation during the course of their assignment as detectives; the Civil Service Commission does not consider a transfer into, or out of, a detective position as either a promotion or demotion; and in any event, Civil Service statutes and regulations require that any claim that an officer was unjustly demoted be presented to the Civil Service Commission.

The PBA asserts that the Township has misconstrued the intent of its grievance. It states that it does not contest the Township's right to reassign the officers to the patrol division, but rather seeks to enforce the officers' contractual right, based on their successful completion of a probationary period while assigned as detectives, to have their compensation maintained at that level.

We have often restrained arbitration over claims contesting the substantive decision to transfer a police officer from detective to patrol officer. See, e.g., Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998); Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991); City of Long Branch, P.E.R.C. No. 92-53, 17 NJPER 506 (¶22248 1991); City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990). It does not matter whether the personnel action is disciplinary or not. The PBA, however, is not challenging the transfer decisions.

We will not restrain arbitration over the claim raised by the grievance that the officers were contractually entitled to continue to receive their detective-level pay. 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 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) (declining to restrain arbitration of a claim that the parties had agreed to permit transferred officers to retain the detectives' increment in recognition of their being more qualified, trained and experienced). We repeat, however, what we said in Wayne: "If the PBA cannot prove the existence of an agreement to continue the

stipend after a transfer from the detective bureau, it would follow that the salary reduction was a direct consequence of the managerial decision to transfer the grievants." Id. at 44.

Thus, absent such an agreement, an arbitrator cannot order that the officers continue to receive detective pay.

ORDER

The request of the Township of Bloomfield for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commission Colligan recused himself.

ISSUED: February 25, 2010

Trenton, New Jersey