

P.E.R.C. NO. 2013-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-2010-094

PBA LOCAL 266,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Vineland for a restraint of binding arbitration of a grievance filed by PBA Local 266. The grievance alleges the City violated the parties' collective negotiations agreement when it refused to pay retroactive salary increases to officers who left employment by resignation or termination prior to the settlement of the new contract. The Commission holds that the subjects of the grievance concerns compensation which is mandatorily negotiable subject.

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, Buonadonna & Benson, attorneys
(Michael E. Benson, of counsel)

For the Respondent, Alterman & Associates, LLC,
attorneys (Christopher A. Gray, of counsel)

DECISION

On May 21, 2010, the City of Vineland petitioned for a scope of negotiations determination.^{1/} The City seeks a restraint of binding arbitration of a grievance filed by PBA Local 266. The grievance alleges the City violated the parties' collective negotiations agreement when it refused to pay retroactive salary increases to officers who left employment by resignation or termination prior to the settlement of the new agreement. We decline to restrain arbitration.

^{1/} This case was placed on hold for a period while the parties attempted to settle the grievance.

The parties have filed briefs. The City has filed exhibits and the certification of Business Administrator Denise Monaco. These facts appear.

The PBA represents all rank and file police officers employed by the City of Vineland. The parties' most recent agreement has a duration from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration.

In or about May 14, 2009, the City and PBA reached a successor agreement that included retroactive pay for officers. The City provided retroactive compensation for officers who retired prior to the settlement of the parties' agreement. The City denied retroactive compensation to officers who separated from employment by termination or resignation. The PBA filed a grievance that was denied. On May 5, 2010, 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 City argues that the terms of the new agreement only apply to current officers. Monaco asserts that the City has never, except in the case of retirees, provided or considered providing retroactive payments to persons no longer on the City payroll. The City further asserts it has a managerial prerogative to exclude retroactive payments to safeguard revenues, assure uniformity in compensation practices, and maintain the public budgetary process.

The PBA responds that compensation for employees who were still working during the time period the retroactive compensation covers is mandatorily negotiable.

The City replies that the PBA has not contested that it has never provided retroactive pay to officers who separated for reasons other than retirement.

The sole negotiability issue is whether the PBA may seek contractual compensation for former employees who were on the payroll during the time period the retroactive compensation covers. Compensation is the prime example of a mandatorily negotiable employment condition. Woodstown-Pilesgrove Reg. H.S.

Dist. Bd. of Ed. v. Woodstown-Pilesgrovr Reg. Ed. Ass'n, 81 N.J. 582 (1980); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); Belleville Bd. of Ed v. Belleville Ed. Ass'n, 209 N.J. Super. 93 (App. Div. 1986). Salary and benefit increases arrived at through collective negotiations do not automatically apply to employees no longer on the payroll. The issue of whether retroactive payments will be made to employees who have resigned from their employment during negotiations for a successor contract depends on what the employer and the majority representative agreed to in negotiations - sometimes they agree that such payments will be made and sometimes they agree that such payments will not be made. Whether the parties have made an agreement to pay retroactive compensation goes to the merits of the grievance. Ridgefield Park.

ORDER

The request of the City of Vineland for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: November 19, 2012

Trenton, New Jersey