

P.E.R.C. NO. 2013-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-2010-098

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 contests the prorating of an officer's clothing allowance. The Commission holds that the amount of clothing allowance an officer receives relates to compensation that is a 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.

P.E.R.C. NO. 2013-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-2010-098

PBA LOCAL 266,

Respondent.

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. The City seeks a restraint of binding arbitration of a grievance filed by PBA Local 266. The grievance contests the prorating of an officer's clothing allowance. We deny the City's request and permit arbitration.

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

The PBA represents all rank and file police officers. The City and PBA are parties to a collective negotiations agreement with a duration from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration.

Article 22 is entitled "Clothing and Uniform Maintenance Allowances" and provides the amount to be paid annually to officers. Section 3 also provides that "Allowances shall be paid once annually in the first payroll period of December. If an employee works less than one full year, then such allowances shall be prorated for the period worked." Article 4 is a Maintenance of Standards provision.

Neither party has provided the procedural history of the grievance except that the PBA demanded binding arbitration on April 15, 2010. 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), permits arbitration 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 preemption issue is presented.

The City argues that it has a managerial prerogative to prorate the clothing allowance for an officer because he was on a family leave and also was suspended without pay. It requests we restrain arbitration because it asserts the grievance is really motivated by the discipline that was imposed on the officer.

The PBA responds that the issue of clothing allowance for officers is mandatorily negotiable because it intimately and directly affects the work and welfare of officers and does not substantially limit the City's policymaking powers. It further asserts that the City is improperly framing the issue as discipline.

The amount of clothing allowance is mandatorily negotiable. Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982); Winslow Tp., P.E.R.C. No. 2004-40, 29 NJPER 548 (¶178 2003). Whether the contract permits the City to prorate clothing allowance concerns the merits of the grievance outside our jurisdiction. Ridgefield Park. Any argument by the City that this grievance concerns discipline and not clothing allowance as

asserted by the PBA must be made to the arbitrator. Fairlawn Bd. of Ed., P.E.R.C. No. 2012-58, 38 NJPER 361 (¶123 2012).

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself. Commissioner Bonanni was not present.

ISSUED: December 13, 2012

Trenton, New Jersey