

P.E.R.C. NO. 2013-43

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-2010-100

PBA LOCAL 266,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants 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 by under staffing shifts. The Commission holds that the grievance concerns minimum staffing levels which are neither mandatorily nor permissively negotiable.

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 petition. 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 by under staffing shifts. We restrain arbitration.

The parties have filed briefs. The City has filed exhibits and the certification of Chief Timothy Codispoti. These facts appear.

The PBA represents the City's rank and file police officers. The parties' most recent agreement expired on December 31, 2010. The grievance procedure ends in binding arbitration.

On or about September 4, 2008, the PBA filed a grievance alleging the City was not adequately staffing shifts. On April 15, 2010, the PBA filed a demand for binding arbitration of the grievance. The demand for arbitration provides:

The City of Vineland has violated the contract with PBA Local 266 which includes, but not limited to, Maintenance of Standards (Health and Safety) and (Shortage of Manpower); wherein shifts are running short due to inadequate staffing levels. This Violation has occurred since September 4, 2008 and is continuous to date.

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 nonnegotiable managerial prerogative to set staffing levels. The PBA responds that the matter of inadequate staffing levels and shifts running short is an item that, on balance, does not substantially limit the City's policymaking power. The City replies that its interest in freely making staffing decisions is the dominant concern and minimum staffing levels are not permissively negotiable.

We have consistently held that a public employer has a managerial prerogative to determine its staffing levels. See, e.g., City of Linden, P.E.R.C. No. 95-18, 20 NJPER 380 (¶25192 1994); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 1981), certif. den. 88 N.J. 476 (1981). Minimum staffing levels are not permissively negotiable. See Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101 (¶31041 2000) (citing cases generally barring enforcement of contract provisions binding employers to specific staffing levels). This prerogative includes the determination

that the department will operate below announced minimum staffing levels. Borough of Hawthorne, P.E.R.C. No. 2011-61, 37 NJPER 54 (¶20 2011). The PBA has not provided a certification to establish any facts to balance or find that its grievance relates to anything more than a challenge to the employer's staffing decision. Accordingly, we restrain binding arbitration.

ORDER

The City of Vineland's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Wall recused himself. Commissioner Bonanni was not present.

ISSUED: December 13, 2012

Trenton, New Jersey