

P.E.R.C. NO. 2014-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2013-035

PBA LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Trenton for a restraint of binding arbitration of a grievance filed by PBA Local 11. The grievance asserts that the City violated the parties' collective negotiations agreement by terminating a unit member's detective pay while she was assigned to detective duty. The Commission holds that whether a detective stipend is linked to a detective assignment or to other law enforcement duties is a question of contract interpretation reserved to an arbitrator.

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, Ruderman & Glickman, P.C.,
attorneys (Steven S. Glickman, on the brief); Becker
Meisel LLC, attorneys (Wes Bridges, of counsel)

For the Respondent, Kroll Heineman Carton, LLC (Raymond
G. Heineman, of counsel)

DECISION

On January 7, 2013, the City of Trenton filed a scope of negotiations petition. The City seeks a restraint of binding arbitration of a grievance filed by PBA Local 11 (PBA). The grievance asserts that the City violated the parties' collective negotiations agreement (CNA) by terminating a unit member's detective pay while she was assigned to detective duty.

The parties have filed briefs and exhibits. The PBA submitted the certification of PBA President George Dzurkoc. The City did not submit a certification.^{1/} These facts appear.

^{1/} N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

The PBA represents all uniformed and non-uniformed police officers and police officer detectives of the City's Police Department. The PBA and the City are parties to a CNA effective from January 1, 2006 through December 31, 2010. The grievance procedure ends in binding arbitration.

Article IX of the CNA is entitled "Wages - Detective Pay - Breathalyzer Pay". Section 9.02 provides:

All police officers assigned as detective or plainclothesman shall receive a differential equal to an additional three percent (3%) of base salary per year in accordance with the following:

- a. All officers receiving detective pay as of May 1, 2001, will be "grandfathered" and will continue to receive detective pay.
- b. Officers assigned to detective work who were not receiving detective pay as of May 1, 2001, will receive detective pay pro rated according to their actual performance of detective work.
- c. "Detective work" means plainclothes investigative work performed by officers assigned to the Investigative Services Division. It is understood that the work formerly performed by officers assigned to the "pro-active" unit falls within the definition of "detective work," and that officers performing such work shall receive the detective stipend.

Dzurkoc certified that the grievant is a senior police officer who has been assigned to the Police Department's Training Bureau for years; she has more recently been assigned duties as

the Department's "SORA officer"^{2/}; as of May 7, 2011, recruit training was eliminated and the grievant was transferred "on paper" to Human Resources, but maintained her Training and SORA responsibilities; the grievant continued to receive detective pay and be regarded as a detective by the Department; and on October 19, 2012, the grievant's detective pay was terminated.

On October 22, 2012, the PBA filed a step 1 and step 2 grievance asserting, in pertinent part:

On October 19, 2012 Personnel Classification Order 2012-110 was issued by you terminating Detective [Grievant]'s detective pay. Detective [Grievant] has been receiving detectives pay for approximately two years for her duty assignment. Detective [Grievant] is currently in that same duty assignment yet you essentially reduced her salary for no justifiable reason.

The association asserts this violation of the CBA appears to be retaliatory in nature. Subsequently the association asserts the only remedy in this matter is to reinstate Detective [Grievant]'s pay status.

On October 24, 2012, the PBA demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the City may

^{2/} SORA officers are responsible for investigations under the "Security Officers Registration Act."

have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

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.

Arbitration is permitted if the subject of the grievance 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). Thus, if we conclude that the PBA's grievance is either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

Citing New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998); City of Orange Township, P.E.R.C. No. 2007-59, 33 NJPER 115 (¶40 2007); and UMDNJ, P.E.R.C. No. 2011-79, 37 NJPER 203 (¶64 2011), the City argues that the grievance raises the issue of the negotiability of transfers or reassignments. It asserts that the decision to transfer or reassign a public employee is a policy determination that is not mandatorily negotiable.

The PBA argues that the issue of whether the grievant is entitled to detective pay for her current duties is arbitrable because pay for employees acting in a higher classification or capacity is mandatorily negotiable. The PBA also asserts that the grievant's reassignment implicates the CNA's seniority assignment clauses.^{3/} Citing Maple Shade, P.E.R.C. No. 2012-072,

^{3/} Article VII, Section 7.02(a) of the CNA provides that shift assignments may be made based on seniority. Article XIX,
(continued...)

39 NJPER 61 (¶25 2012), it contends that the Commission has found such clauses negotiable where the contract has a sufficient reservation of management's right to deviate from seniority where qualifications and skill dictate. It notes that the seniority assignment clause in Article XIX was previously found negotiable in City of Trenton, P.E.R.C. No. 2007-61, 33 NJPER 118 (¶42 2007). Finally, the PBA argues that the City's reliance on City of Orange Township is misplaced because the grievant in that case alleged improper motive for her reassignment. It asserts that the grievant is not arbitrating the issue of motive, but only whether the change of her detective stipend violated the CNA's detective stipend and seniority preference clauses.

As set forth above, the City has not filed a certification in this matter. There are no facts in the record that indicate that the grievant was transferred or reassigned to different duties at the time her detective pay was terminated. The only facts before us indicate that the grievant's detective pay was terminated while her duties remained the same.

We have held in the past that whether a detective stipend is linked to a detective assignment or to other law enforcement duties is a question of contract interpretation reserved to an arbitrator. See City of Newark, P.E.R.C. No. 2011-53, 37 NJPER

3/ (...continued)
Section 19.02 provides that "the principles of seniority shall apply to employees covered by this Agreement."

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47 (¶17 2010); City of Elizabeth, P.E.R.C. No. 2007-16, 32 NJPER
321 (¶133 2006).

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: September 26, 2013

Trenton, New Jersey