

P.E.R.C. NO. 2014-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-2014-014

PBA LOCAL 334,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Hudson for a restraint of binding arbitration of a grievance filed by PBA Local 334. The grievance asserts that the County unilaterally reduced two officers' salaries on the step guide. The Commission holds that an employee's placement on a salary guide is mandatorily negotiable, and that the "Rice Bill", N.J.S.A. 40A:14-180, through which the grievants were rehired does not expressly preempt negotiations of initial salary guide placement.

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, Scarinci Hollenbeck, LLC, attorneys
(Sean D. Dias, of counsel)

For the Respondent, Lindabury McCormick Estabrook &
Cooper, P.C., attorneys (Eric B. Levine, of counsel and
on the brief; Scott D. Zucker, on the brief)

DECISION

On September 18, 2013, the County of Hudson filed a scope of negotiations petition. The County seeks a restraint of binding arbitration of a grievance filed by PBA Local 334. The grievance asserts that the County unilaterally reduced two officers salaries on the step guide. We decline to restrain arbitration.

The County and the PBA have submitted briefs and exhibits. The PBA represents all Sheriff's Officers employed by the County excluding superior officers. The County and the PBA are parties to a collective negotiations agreement effective from January 1, 2003 through December 31, 2007. The grievance procedures end in binding arbitration. Article XXX is entitled

"Step Language" and sets forth information regarding the administration of the step system.

Neither the County or the PBA has filed a certification.^{1/} Therefore, we are constrained to glean the facts from the exhibits in the record. Two letters in the record indicate that on January 24, 2013, two officers were notified as follows:

It has come to the attention of the County that at the time of your initial hire, you were paid a starting salary in excess of that paid to other officers hired pursuant to the Rice Bill. At the time of your hire, you were hired at a salary of \$43,471.00 when you should have been hired at an annual salary of \$30,139.00. Commencing with the next pay period, January 26, 2013, your annual salary will be \$32,458.00, subject to the increases provided for by the terms of the collective bargaining agreement governing your work unit.

The PBA filed a grievance, asserting that the reduction of the officers' salaries was a violation of past practice and Article XXX of the Agreement. As a remedy, the PBA seeks to have the officers returned to their prior salaries, with back pay and interest. The grievance was denied at all steps, the PBA demanded arbitration, and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

^{1/} N.J.A.C. 19:13-3.5 (f) (1) sets forth that all briefs filed with the Commission in scope of negotiations cases shall "[r]ecite all pertinent facts supported by certifications based upon personal knowledge.

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. Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically, and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982).

The County argues that the issue of the officers placement in the salary guide is preempted by N.J.S.A. 40A:14-180(d), N.J.A.C. 4A:4-3.9(a) and 4A:4-3.10. The PBA responds that placement on a salary guide is a negotiable term and condition of employment and that neither the aforementioned statute or regulations preempt this matter.

An employee's placement on a salary guide is generally mandatorily negotiable and legally arbitrable. Belleville Ed. Assn. V. Belleville Bd. of Ed., 209 N.J. Super. 93 (App Div.

1986). However, the County is arguing that in this case, because the officers were hired pursuant to N.J.S.A. 40A:14-180, commonly referred to as the "Rice Bill", the officers placement on the salary guide is preempted by that statute and two Civil Service Commission regulations. The Rice Bill provides reemployment opportunities for law enforcement officers who were laid off from service. Section (d) of the Rice Bill provides as follows:

d. the seniority, seniority-related privileges and rank a law enforcement officer possessed with the employer who terminated the officer's employment for reasons of economy shall not be transferable to the new position when the officer is appointed to a law enforcement position pursuant to the provisions of this section.

The aforementioned section of the Rice Bill sets forth that when an officer is hired, seniority, seniority-related privileges and rank from the prior position do not transfer to the new position. However, it does not "expressly, specifically and comprehensively" direct that an officer be placed at a certain step on the step guide.^{2/}

^{2/} The term seniority is not defined in the Rice bill. However, it is defined in the regulations promulgated by the Civil Service Commission pertaining to layoffs. N.J.A.C. 4A:8-2.4(a) defines seniority as "the amount of continuous permanent service in the jurisdiction, regardless of title.
. . . "

Nor does N.J.A.C. 4A:4-3.9(a), "reemployment program for certain law enforcement officers and firefighters" preempt the issue of the officer's placement on the step guide. That regulation sets forth, in pertinent part, as follows:

(a) A municipality or a county which has established a police department as described in N.J.S.A. 40A:14-180 may appoint any person to an entry level title in the police department who has:

1. Served as a law enforcement officer. . . in good standing in any State, county or municipal law enforcement department or agency;
2. In the case of service with the State, a county or municipality operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period in a law enforcement title;
3. In the case of service with a county or municipality not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period in law enforcement title; and
4. For reasons of economy, efficiency or other related reasons, was laid off or demoted from a law enforcement title to a non-law enforcement title, within 60 months prior to the appointment permitted in (a) above.

[N.J.A.C. 4A:4-3.9(a) (emphasis mine)].

The aforesaid regulation sets forth that a county "may" appoint an officer to an entry level position that is hired pursuant to the Rice Bill, but does not "expressly, specifically or comprehensively" mandate that an officer be hired at an entry level position. Similarly, N.J.A.C. 4A:4-3.10(d) (5) provides that a county interested in making an appointment pursuant to the Rice Bill "shall not be made to a title other than entry level

without Department of Personnel approval." This regulation also does not mandate that an officer appointed pursuant to the Rice Bill be hired at entry level, and does not preempt the issue of the officers placement on the salary guide. Therefore, the issue of the officers placement on the salary guide is mandatorily negotiable and legally arbitrable.

ORDER

The County of Hudson's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: May 29, 2014

Trenton, New Jersey