

P.E.R.C. NO. 2014-90

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-2014-009

PARK POLICE,  
FOP LODGE NO. 76,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Camden for a restraint of binding arbitration of a grievance filed by the Park Police, FOP Lodge No. 76. The grievance asserts that the County violated the parties' collective negotiations agreement by not providing severance pay or medical benefits to unit members who retired. The Commission holds that the issue is mandatorily negotiable because the interpretation by an arbitrator of how the CNA's severance pay provision applies to retiring officers would not substantially limit any governmental powers.

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, Brown & Connery, LLP, attorneys  
(Michael J. DiPiero, of counsel)

For the Respondent, Markowitz & Richman, attorneys  
(Matthew D. Areman, of counsel)

DECISION

On August 22, 2013, the County of Camden filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Park Police, FOP Lodge No. 76. The grievance asserts that the County violated the parties' collective negotiations agreement (CNA) by not providing severance pay or medical benefits to unit members who retired. We deny the request for a restraint of binding arbitration.

The parties have filed briefs and exhibits. The County submitted the certification of Ross G. Angilella, County Administrator. These facts appear.

The FOP represents all of the County's Park Police employees excluding the ranks of Chief and Captain. The FOP and County are parties to a CNA effective from January 1, 2006 through December 31, 2009, which was subsequently extended and modified by an April 1, 2013 Memorandum of Understanding (MOU) effective January 1, 2010 through December 31, 2012. The grievance procedure ends in binding arbitration.

Article XIX of the CNA is entitled "Separation Pay Based on Service Longevity" and provides, in pertinent part:

- A. Should the County decide to exercise its managerial prerogatives in such fashion that the Park Police should be abolished, merged, absorbed within another agency, or ceases to operate as a separate entity unto itself during the contract term, the following shall apply:
  - 1. Each employee covered under the terms of this agreement shall be entitled to one (1) month's longevity pay for each three (3) months of service. Employees shall be given credit for prior months employed provided that such credit shall not exceed thirty-six (36) months longevity pay. Employees shall be allowed a maximum of thirty-six (36) months longevity credit. This benefit shall be paid in one (1) check on the employee's last day of service. The County agrees to maintain all medical benefits for a period of one (1) year from the employee's date of separation.

The County Administrator certified that on January 25, 2013, the Legislature amended N.J.S.A. 40:37-11.6 to permit the reorganization of county park police departments into the County Police department provided all Park Police officers were offered

positions with the County Police department. She further certified that upon that change in the law, it was determined that the remaining Park police officers would be best utilized as officers in the County Police Department Metro Division. On March 14, 2013, the County delivered transfer notices to all unit members initially effective on April 2, but changed to April 17 at the FOP's request.

On March 31, 2013, eight of the eleven unit members submitted their retirement paperwork effective April 1. The eight retired unit members filed a grievance alleging that the County owed them severance pay pursuant to Article XIX of the CNA. The grievance was denied at several steps of the grievance procedure. On August 1, the grievance was denied following a July 25 hearing. On August 12, the FOP demanded arbitration. This petition ensued.

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

The County asserts that its decision to transfer Park Police officers to the County Police Department predominantly involves a governmental policy determination that would be significantly hampered if an arbitrator were to apply the contract's severance pay provision. The FOP responds that the separation pay provisions at issue do not infringe on the County's managerial right to decide to abolish, merge, reduce or transfer Park Police positions; rather they simply provide benefits to employees impacted by such a decision, specifically where the employment relationship ceases.

We recently determined the negotiability of Article XIX in County of Camden, P.E.R.C. No. 2013-21, 39 NJPER 184 (¶58 2012), which contains an at length discussion of the meaning of severance pay. Ultimately, we found Article XIX mandatorily negotiable, but only where there has been an actual separation from employment, explaining as follows:

In this case the "severance pay" contract language can apply not only to cases where employees represented by the FOP completely separate from County employment, but also to employees who remain on payroll. Providing that such employees could receive up to three years compensation for a title change or transfer imposes a financial obligation on the employer that would inhibit the County from exercising its managerial prerogative to determine staffing levels and the manner and means by which it will provide law enforcement services.

Accordingly, we hold that the disputed language is mandatorily negotiable and may remain in the agreement only where the payments can legitimately be considered severance pay, i.e. the recipient must not continue as an active Camden County employee.

[Id. at 10].

In the case herein, the officers are not seeking severance pay due to title change or a transfer, but rather because they have retired. We do not find that any governmental powers will be substantially limited by allowing an arbitrator to interpret Article XIX, and whether it was intended to apply to officers who have retired. Therefore, we find this matter to be mandatorily negotiable.

ORDER

The request of the County of Camden for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: June 26, 2014

Trenton, New Jersey