

P.E.R.C. NO. 2016-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ENGLEWOOD,

Petitioner,

-and-

Docket No. SN-2016-013

POLICEMEN'S BENEVOLENT
ASSOCIATION LOCAL 216,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City of Englewood's request for a restraint of binding arbitration of a grievance filed by the Policemen's Benevolent Association Local 216. The grievance contests the City's failure to build or provide an "equivalent" replacement when the pre-existing pistol range facility was closed. Finding that the City's selection of an appropriate pistol range facility falls within its managerial prerogative to make determinations regarding training-related issues and that requiring the construction of a pistol range facility would infringe on the City's managerial prerogative to determine capital expenditures and major budgetary expenses, while noting that permitting the PBA or an arbitrator to substitute their preference or judgment regarding what constitutes an "equivalent" pistol range facility would significantly interfere with these managerial prerogatives, the Commission restrains arbitration.

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, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel)

For the Respondent, Loccke, Correia & Bukosky,
attorneys (Richard D. Loccke, of counsel and on the
brief; Corey M. Sargeant, on the brief)

DECISION

On September 3, 2015, the City of Englewood (City) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association Local 216 (PBA). The grievance asserts that the City violated the parties' collective negotiations agreement (CNA) when it closed the pre-existing pistol range facility and failed to build or provide an "equivalent" replacement.

The City filed a brief, exhibits and the certification of its City Manager. The PBA filed a brief and the certification of its President. The City also filed a reply brief and the

certification of the Chief of Police (Chief). These facts appear.

The PBA represents all members of the regular police force employed by the City except those individuals who hold the rank of Chief, Deputy Chief, Captain, Lieutenant, or Sergeant. The City and the PBA are parties to a CNA in effect from January 1, 2014 through December 31, 2017. The grievance procedure ends in binding arbitration.

Article XVI of the CNA, entitled "Personal Property Damage Fund," Section 16.12.1, "Pistol Range," provides in pertinent part:

In the event that by virtue of any municipal action, the present Police Pistol Range is rendered unusable, destroyed or for any reason no longer available for its present use, the City agrees to provide an equivalent range and permanent range house for the use of the Police Department as soon as is reasonably practicable.^{1/}

According to the City Manager, prior to 2015 there was a pistol range facility available within the City for Police Department use that was owned/operated by a private entity. In or around 2005, the New Jersey Department of Environmental Protection (NJDEP) determined that the property on which the pistol range facility was located was in need of an environmental cleanup. The City Manager certifies that in 2013, the City hired

^{1/} The City Manager has certified that the SOA has a similar clause (Article 16.11.1) in its CNA with the City.

a Licensed Site Remediation Professional (LSRP) to develop a cleanup plan. Based on recommendations received from the LSRP, the pistol range facility had to be closed by the end of 2014 in order to begin the remediation process. The City Manager certifies that the property will be used exclusively by its private owner after the remediation is completed.

According to the City Manager, there is no alternative site that meets NJDEP requirements to build or reconstruct a pistol range facility within the City. The City has decided not to build or renovate property to house a pistol range facility because such a capital expenditure is not in the best interests of the City or its taxpayers. Rather, the City made arrangements for the Police Department to use the Bergen County Police Academy's pistol range facility located in Mahwah, New Jersey.^{2/} The City Manager certifies that this arrangement provides police officers adequate accommodations to complete any required training. In addition, the City provides appropriate compensation to ensure that police officers do not incur any "out-of-pocket" expenses.

The PBA President certifies that the prior pistol range facility was located within the City for approximately forty

^{2/} In a letter dated July 31, 2015, the Chief states that the Bergen County Police Academy accommodations include "multiple port shooting at a distance [of] up to 50 yards. . . [and] a range house that is heated and air conditioned to conduct classroom instruction."

years. According to the President, the range house was equipped with air conditioning and heating units, bathroom facilities, a refrigerator, tables, and chairs. He certifies that police officers have taken their lunch breaks at the range house and that the PBA has used the facility for union meetings, caucuses, and fundraisers.

On July 22, 2015, the PBA filed a grievance claiming that the existing arrangements were an ongoing violation of the CNA and seeking compliance with previous practices and conditions regarding the pistol range facility. The City denied the grievance at each step of the process. On August 19, 2015, the PBA demanded binding grievance 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 employer 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 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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The City argues that arbitration must be restrained because the PBA is clearly seeking the construction or reconstruction of a pistol range facility despite the fact that the City retains a managerial prerogative to determine when a capital improvement or major budgetary expense is necessary. The City also argues that it has a managerial prerogative to determine which employees will be trained, how they will be trained, and how long they will be trained and that it has ensured that police officers are being adequately trained pursuant to the Attorney General Guidelines, and in compliance with mandated firearms qualifications, at the Bergen County Policy Academy.

The PBA argues that its grievance is legally arbitrable because it centers on a voluntarily agreed upon contract provision.^{3/} The PBA also maintains that the parties have already negotiated and agreed upon specific terms regarding the

^{3/} While the remedy sought by the PBA is unclear, the PBA President specifies in a letter dated February 1, 2015 that the grievance relates to the City's failure "to build or provide a new permanent pistol range and range house to replace" the pre-existing pistol range facility.

pistol range facility and therefore the City is incorrect in asserting any managerial prerogative.^{4/}

The City replies and reiterates that the PBA's grievance seeking a pistol range facility infringes on its managerial prerogatives. Moreover, despite the PBA's claim regarding other uses for the former pistol range facility, the City notes that the PBA has its own office and lunchroom within police headquarters. The City also notes that the PBA conducts meetings and events at other locations within the City.

We have consistently held that "[a]n employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be trained." City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015) (citing City of Orange Tp., P.E.R.C. No. 2005-31, 30 NJPER 457 (¶151 2004)); see also, Wayne Tp., P.E.R.C. No. 98-85, 24 NJPER 71 (¶29040 1997); Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). "Once. . .[a public employer] unilaterally decides when and how it will train employees," however, related procedural issues and terms and conditions of employment such as compensation are mandatory subjects of

^{4/} Other than cases referencing the Commission's standard of review, the PBA did not cite any case supporting its position that building or providing an "equivalent" pistol range facility replacement is mandatorily or permissively negotiable.

negotiation. Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985).

We note that although "physical facilities and conveniences related to employee comfort and safety are mandatorily negotiable," these issues have ordinarily arisen within the context of existing facilities or equipment. Mercer Cty., P.E.R.C. No. 2009-11, 34 NJPER 248 (¶86 2008) (finding that a grievance related to the condition of the yard towers at the Mercer County Correction Center was legally arbitrable); Atlantic Cty. Sheriff, P.E.R.C. No. 93-68, 19 NJPER 148 (¶24073 1993) (restraining arbitration of a grievance to the extent it sought an order requiring a public employer to buy more police vehicles or to subcontract maintenance operations, while finding that the grievance was legally arbitrable to the extent it pertained to a mandatorily negotiable contract provision requiring a public employer to provide apparel, tools or devices necessary in order to insure employee safety, health and security); South Brunswick Tp., P.E.R.C. NO. 86-115, 12 NJPER 363, 364 (¶17138 1986) (finding that contract proposals related to a public employer providing armored vests, helmet with detachable face shield, head restraints, lap and shoulder belts, flares, cable cutters, fire extinguishers, and clip board in police patrol vehicles were mandatorily negotiable); In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J.

Super. 12, 27-30 (App. Div. 1977) (finding that contract proposals related to a public employer providing a work area, private pay phone, private restrooms with specific amenities, free parking, set of keys, and fire escape were mandatorily negotiable).

In cases where we have not restrained arbitration of grievances involving physical facilities, we have clearly held that "an arbitral award [cannot] order a capital improvement involving a major budgetary expense" while refusing to "speculate about what remedies might or might not be lawful if a contract violation [was] proved." Rutgers, The State University, P.E.R.C. No. 96-39, 22 NJPER 23 (¶27010 1995) (finding that one grievance seeking access to already existing staff lounge facilities pertained to a mandatorily negotiable term and condition of employment while another grievance related to the timing and location of employee uniform changes pertained to mandatorily negotiable terms and conditions of employment short of an award ordering a capital improvement); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986) (finding that a contract proposal related to physical facilities for employees was mandatorily negotiable to the extent that it did not require capital expenditures such as insisting that an addition be built onto a school); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985) (finding that contract proposals regarding the provision of union offices and use of a municipal copying machine

were mandatorily negotiable to the extent that they did not require the expenditure of capital funds); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980) (finding that a contract proposal related to setting aside an area for use as a break room was mandatorily negotiable to the extent it did not require a capital expense decision); In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12, 27-30 (App. Div. 1977) (finding that subject matters that intimately and directly affect the work and welfare of employees and do not significantly interfere with management responsibilities are mandatorily negotiable absent limitations related to capital expenditures).

We find that the City's selection of an appropriate pistol range facility falls within its managerial prerogative to make determinations regarding training-related issues. City of Atlantic City. In addition, requiring the construction of a pistol range facility would infringe on the City's managerial prerogative to determine capital expenditures and major budgetary expenses. Rutgers, The State University. Even short of a capital expenditure, permitting either the PBA or an arbitrator to substitute their preference or judgment regarding what constitutes an "equivalent" pistol range facility would significantly interfere with managerial prerogatives and place substantial limitations on the City's policymaking powers

pertaining to training-related issues and budgetary expenses.

Paterson.^{5/6/}

Accordingly, the City's request for a restraint of binding arbitration is granted.

ORDER

The request of the City of Englewood for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioner Wall recused himself.

ISSUED: December 17, 2015

Trenton, New Jersey

5/ Given that the City does not own or operate the Bergen County Police Academy's pistol range facility, an arbitral award requiring the provision of certain amenities, conveniences or access might necessitate the selection of a different pistol range facility and infringe on the City's managerial prerogatives.

6/ The PBA's grievance does not refer to any safety, procedural or other concerns related to terms and conditions of employment with respect to the Bergen County Police Academy pistol range facility or police headquarters. See, e.g., Mercer Cty.; Franklin Tp. Therefore, we do not address these issues here.