

P.E.R.C. NO. 2021-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WINSLOW TOWNSHIP FIRE DISTRICT 1
BOARD OF FIRE COMMISSIONERS,

Petitioner,

-and-

Docket No. SN-2021-012

IAFF LOCAL 3249,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Winslow Township Fire District 1 Board of Fire Commissioners (Township) for a restraint of binding arbitration of a grievance filed by IAFF Local 3249, asserting that the Township violated the parties' extended collective negotiations agreement (extended CNA) when the Board provided a 2% increase in the current base salary of each employee covered by agreement, while failing to implement salary scale step progressions for represented employees for the 2020 year. The Commission finds that the parties' dispute about whether the agreed-upon CNA extension adopted all provisions of the prior CNA, including salary step increments, is a contractual dispute appropriate for resolution through the parties' negotiated grievance procedure.

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, Law Offices of Parker McCay, P.A.,
attorneys (Frank P. Cavallo, Jr., of counsel and on the
brief)

For the Respondent, Law Office of John F. Pilles, Jr.,
attorneys (John F. Pilles, of counsel and on the brief)

DECISION

On September 23, 2020, Winslow Township Fire District 1 Board of Fire Commissioners (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by IAFF Local 3249 (Local 3249). The grievance asserts that the Township violated the parties' extended collective negotiations agreement (extended CNA) when the Board provided a 2% increase in the current base salary of each employee covered by the agreement, while failing to implement salary scale step progressions for represented employees for the 2020 year.

The Township filed briefs, exhibits and the affidavit of its Fire Chief, Marc Rigberg. Local 3249 filed a brief, an exhibit and the affidavit of its President, Keith B. Kemery. These facts appear.

Local 3249 represents all full-time Firefighters, Lieutenants, Captains and Battalion Chiefs. The Township and Local 3249 were parties to a CNA in effect from October 15, 2015 through December 31, 2019. On January 17, 2020, the Township and Local 3249 entered into an extension of its prior CNA, covering the period from January 1, 2020 through December 31, 2020. The grievance procedure ends in binding arbitration and defines "grievance" as "any controversy arising over the interpretation, application or alleged violation of this contractual agreement affecting the terms and conditions of employment, . . . raised by the Association on behalf of an individual or group of individuals."

Chief Rigberg attests that on November 21, 2019, the Township received correspondence from Local 3249 memorializing Local 3249's proposal to extend the current CNA for one year. This memorialized proposal sets forth that, "during the life of the extension, all steps of each current base salary scale shall be increased by two percent (2%) effective and retroactive to January 1, 2020." On January 17, 2020, the Township and Local

3249 entered into an extension of the prior CNA, covering the period from January 1, 2020 through December 31, 2020.

The extended CNA set forth an agreement that: (1) the current CNA, for the Local 3249 represented Winslow Township Firefighters and Fire Officers bargaining unit, is extended effective January 1, 2020 through, and including, December 31, 2020; (2) with the exception of base salary scales, all provisions of the current CNA shall remain in place in full force and effect during the period of extension; and (3) all steps of the current Base Salary Scales shall be increased by Two Percent (2%) effective January 1, 2020.

Chief Rigberg attests that pursuant to the Agreement, as understood by the Township, all employees were provided a 2% salary scale increase based on their current position on the Salary Scale when the extended CNA was entered into. On February 28, 2020, he notified Kemery, via email, that the Township discussed the extended CNA and understood the agreed upon term to mean "every firefighter received a 2% salary increase." The Chief further attests that the Township understood the CNA extension to adopt all provisions of the prior CNA except the base salary scales.

President Kemery attests that nowhere within the four corners of the extended CNA is there any memorialization of intent that the bargaining unit members would not continue to

proceed through the base salary scales in accordance with their continuing years of employment service. Kemery further attests that the clear and unambiguous language of the extension agreement memorializes a two percent increase for all steps on the current base salary scales; and that the controversy does not involve a lack of "meeting of the minds," but rather the interpretation of agreed-upon and voluntarily signed language within the extension agreement.

On March 6, 2020, the Township received a grievance submitted by Local 3249. The grievance alleges that the Township violated Article XI, Salaries, Paragraphs A-2 and B of the CNA by not implementing negotiated salary scale step progressions and thus not properly compensating represented firefighters for the 2020 year. The grievance sought to have all covered employees placed on their salary scale progressions and made whole for all compensation not received. On May 20, Local 3249 filed a Request for Submission of a Panel of Arbitrators. The parties mutually selected Joseph Licata to act as arbitrator, and the first day of arbitration hearing was scheduled for November 16. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

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 a 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 Township argues that arbitration must be restrained because there was no "meeting of the minds" on the issue of whether the parties' CNA extension required, in addition to the undisputed two-percent increase to base salaries, the payment of salary scale step progressions for unit members in 2020.

Local 3249 argues that arbitration should not be restrained because the subject matter of the grievance involves a mandatorily negotiable issue, specifically the clause reading

"(a)ll Steps on the current Base Salary Scales shall be increased by Two Percent (2%) effective January 1, 2020." Local 3249 stresses that the extension agreement incorporated all provisions of the CNA, including its grievance procedure which culminates in binding arbitration should the parties be unable to resolve a controversy involving interpretation and application of employment terms and conditions. Local 3249 further argues that the Commission lacks jurisdiction to determine, in a scope of negotiations proceeding, a factual dispute as to whether the parties had a "meeting of the minds" on a compensation provision in the extension agreement.

We find the subject of the grievance at issue to be mandatorily negotiable and legally arbitrable. Here, Local 3249 did not file an unfair practice charge. It filed a grievance alleging the Township violated a compensation provision of the parties' negotiated agreement. The subject of salary step increments is mandatorily negotiable "because it is part and parcel to an employee's compensation for any particular year." Atlantic Cty., 230 N.J. 237, 253 (2017). See also, Robbinsville Tp. Bd. of Ed., 227 N.J. 192, 199 (2016). Disputes about the interpretation or application of a negotiated agreement must be resolved through the negotiated grievance procedure. See, e.g., Borough of Hopatcong, P.E.R.C. No. 99-22, 24 NJPER 473 (¶29220 1998), recon. den., P.E.R.C. No. 99-50, 25 NJPER 34 (¶30012

1998); Passaic Cty. Comm. Coll., P.E.R.C. No. 93-54, 19 NJPER 59 (¶24027 1992), recon. granted, P.E.R.C. No. 93-67, 19 NJPER 147 (¶24072 1993); Ocean Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 86-107, 12 NJPER 341 (¶17130 1986) (PERC does "not have the jurisdiction to resolve the substantive terms of the parties' contract"). Washington Tp., P.E.R.C. No. 98-63, 24 NJPER 4 (¶29002 1997), a case relied upon by the Township, is not controlling. That decision addressed whether a public employer committed an unfair labor practice when it refused to execute an agreement. Here, the parties dispute whether the agreed-upon CNA extension adopted all provisions of the prior CNA, including salary step increments. This is a contractual dispute appropriate for resolution through the parties' negotiated grievance procedure.

ORDER

The request of the Winslow Township Fire District 1 Board of Fire Commissioners for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: January 28, 2021

TRENTON, NJ