

P.E.R.C. NO. 83-160

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-83-41

JERSEY CITY UNIFORMED FIRE
OFFICERS ASSOCIATION, LOCAL
1064, IAFF,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that the Jersey City Uniformed Fire Officers Association, Local 1064, IAFF filed against the City of Jersey City. The grievance had challenged the City's decision, as a result of manpower shortages, to permanently re-assign firefighters serving as aides to battalion and deputy chiefs to regular firefighting duties.

P.E.R.C. NO. 83-160

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-83-41

JERSEY CITY UNIFORMED FIRE
OFFICERS ASSOCIATION, LOCAL
1064, IAFF,

Respondent.

Appearances:

For the Petitioner, John D. Kennedy, Corporation Counsel
(Paul W. Mackey, Second Assistant Corporation Counsel)

For Local 1064, IAFF, Sterns, Herbert & Weinroth, Esqs.
(Michael J. Herbert, of Counsel)

DECISION AND ORDER

On November 19, 1982, the City of Jersey City ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The City seeks to restrain binding arbitration of a grievance that the Jersey City Uniformed Fire Officers Association, Locals No. 1064 ("Local 1064") has filed against the City. The grievance concerns the City's reassignment of firefighters serving as aides to battalion and deputy chiefs to regular on-line firefighting duties.

Both parties filed briefs and documents. The following facts appear.

Local 1064 represents a unit of all the City's fire department superior officers, including battalion and deputy chiefs.

Local 1064 and the City have entered into a collective negotiations agreement effective from January 1, 1980 through July 30, 1982. The agreement contains clauses concerning management rights, maintenance of benefits, and proposed new rules and modifications of existing working conditions. The agreement also contains a grievance procedure which culminates in binding arbitration.

The City's Director of Public Safety has issued a general order (no. 8218) under which certain employees were reassigned from the function of aiding battalion chiefs and deputy chiefs to the function of firefighting in line fire companies. These employees are represented by IAFF, Local 1066.

Prior to their reassignment, the aides performed such duties as driving chiefs to fires, stationing themselves at the rear of burning buildings, and advising the chiefs of the progress of the firefighting operations at the rear of the building. Both Local 1064 and the City agree that the aides supervised and increased the efficiency of the firefighting operation by improving communication between the chiefs and other fire officers. In addition, when not at fires, the aides assisted the chiefs by preparing fire and personnel reports. The City states that it issued the general order to alleviate a manpower shortage in on-line fire suppression companies and to reduce severe overtime costs necessitated by these personnel shortages.

On April 28, 1982, Local 1064 grieved the general order's reassignment of the aides to firefighting duties. The

City denied the grievance. Local 1064 then demanded binding arbitration and the instant petition ensued.^{1/}

The City argues that the reassignment of the aides from a supervisory to a firefighting role was a proper exercise of its managerial prerogative and further, that the management rights clause of the parties' collective negotiations agreement permits such unilateral reassignment of the aides. The City cites Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); and In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976).

Local 1064 argues that the instant dispute is at least permissively negotiable pursuant to In re City of Camden, H.E. No. 82-34, 8 NJPER 181 (¶13078 1982) ("Camden"). It further contends that the management rights defense raised by the City should be raised before an arbitrator pursuant to Ridgefield Park, supra and In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

In Paterson PBA Local No. 1, 87 N.J. 78 (1981), our Supreme Court recognized that certain items, although not mandatorily negotiable, may be permissively negotiated by employers and representatives of police officers and firefighters. The Court set forth the following standards:

...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 an inconsistent term in their agreement...If an item is

^{1/} Local 1066 also grieved the reassignment, and the City filed a scope petition concerning that grievance. It is not necessary to decide that petition formally in light of this decision.

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 policy-making 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.

87 N.J. Super. at 92-93 (citations omitted).

It has been held that the permanent assignment or reassignment of police and fire employees is not a mandatorily negotiable subject, even though it is not preempted from negotiations by a specific statute or regulation. See, Paterson, supra; In re County of Hunterdon, P.E.R.C. No. 83-46, 8 NJPER 607 (¶13210 1982); and In re Town of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982). We therefore must consider whether the issue of such reassignment here places "substantial limitations on the [City's] policy-making powers and thus is the kind of management prerogative that may not be permissively negotiated." Id. at 97. In Paterson, the Court stated:

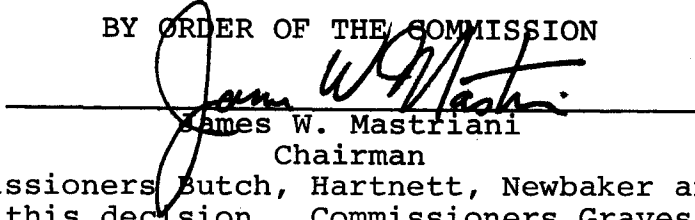
Municipal officials retain discretion to...limit the areas in which personnel will be deployed, inasmuch as these "unquestionably [are] predominantly managerial function[s]" which cannot be delegated to an arbitrator not accountable to the public at large. Id. (Citations omitted)

That observation applies here: under Paterson's guidelines, we cannot find that the City's managerial prerogative to make permanent reassignments to alleviate manpower shortages would remain essentially unfettered if it could not reassign the aides to firefighting duties in this case.^{2/} Accordingly, we restrain finding arbitration of Local 1064's grievance.

ORDER

The request of the City of Jersey City for a permanent restraint of binding arbitration of the grievance of Local 1064, Jersey City Uniformed Fire Officers Association concerning the reassignment of aides to firefighting functions is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Newbaker and Suskin voted in favor of this decision. Commissioners Graves and Hipp voted against the decision.

DATED: Trenton, New Jersey
June 24, 1983
ISSUED: June 27, 1983

^{2/} We are not unmindful of Commission and judicial decisions holding that certain temporary assignments may be permissively negotiable. See, e.g., In re Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1980) aff'd App. Div. Docket No. A-1617-79 (12/18/81), where the Court stated:

Because of the temporary nature of the appointment, we do not believe the governmental powers are unduly restrained by [an agreement providing for such assignments] nor does [the agreement] place substantial limitations on the city's policy-making authority. (Slip opinion, p. 6).

In this case, however, the reassignments are permanent and therefore substantially limit the City's policy-making authority. Local 1064's reliance on Camden is similarly misplaced since temporary reassignments were involved and neither the Hearing Examiner nor the Commission, P.E.R.C. No. 82-103, 8 NJPER 309 (¶13137 1982), suggested in any way that permanent reassignments might be either mandatorily or permissively negotiable in light of the standards set forth in Paterson, supra.