

P.E.R.C. NO. 96-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Petitioner,

-and-

Docket No. SN-95-26

HOBOKEN UNIFORMED FIREFIGHTERS  
ASSOCIATION, LOCAL 1078,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to permanently restrain binding arbitration of a grievance filed by the Hoboken Uniformed Firefighters Association, Local 1078 against the City of Hoboken. The grievance asserts that "the City violated the contract by ... requiring bargaining unit members to perform superior officers' duties without training and without compensation." The Commission finds that compensation for temporary assignments to replace absent officers is mandatorily negotiable.

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, Murray, Murray & Corrigan, attorneys  
(Robert E. Murray, of counsel; Linda Sabat, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, attorneys (Bruce D. Leder, of  
counsel)

DECISION AND ORDER

On September 23, 1994, the City of Hoboken petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Hoboken Uniformed Firefighters Association, Local 1078. The grievance asserts that "the City violated the contract by ... requiring bargaining unit members to perform superior officers' duties without training and without compensation."

The parties have filed certifications, exhibits and briefs. These facts appear.

The City has recognized the Association as the exclusive representative of its non-supervisory firefighters. The City and the Association entered into a collective negotiations agreement

with a grievance procedure ending in binding arbitration. Article XVIII, Section 3 provides:

The practice of appointing fire fighters to higher rank in an acting capacity is discouraged, and it is agreed that such higher rank shall be filled as soon as possible, as provided by law.

Temporary acting in a higher position or rank during vacation, leave, sick leave or other emergencies, shall continue to be made by the City. Any fire fighter not desiring to act may refuse to do so without prejudice.

When a fire fighter is assigned and duly accepts the responsibilities and carries out the duties of a higher rank, said fire fighter, shall be paid at the rate for that higher rank. Further, acting capacity must exceed four (4) hours, after which said fire fighter will be paid for all hours assigned to that higher rank. Only one fire fighter will be used per opening, per hour. Whenever an acting rank is used, it shall be within the assigned work group; the acting rank shall be rotated in a fair and equitable manner among the fire fighters in the group with time in grade, whenever possible.

Normally a captain and two firefighters are assigned to each piece of firefighting apparatus. The captain normally occupies the position next to the driver on any fire vehicle. This position is known as "the seat" and the person occupying that position, usually a captain, is said to be "riding the seat."

Some firehouses in Hoboken contain one piece of equipment and others contain two. The former type is called a "single company," the latter type a "double company." When a captain in a double company firehouse is unavailable, a firefighter may "ride the seat" and perform some of the duties associated with that position.

Those duties include reporting via radio to the dispatcher that the piece of apparatus has arrived at the fire scene, supervising the other two firefighters on the vehicle and determining the right size hose to attack the fire.

The fire chief's affidavit asserts that at least one captain is always present in each firehouse. To achieve this supervision, the chief sometimes relocates a single company to another house and consolidates it with another company to temporarily make that station a double company.

On August 18, 1993, Local 1078 filed a grievance alleging that firefighters had been required to perform captain's duties when riding on a piece of equipment which did not have a superior officer present. The grievance alleged that the practice violated Article XVIII, Section 3 and sought compensation at the captain's rate of pay for firefighters required to perform such duties.

The Association demanded arbitration and this petition ensued. After the City's request for a restraint of arbitration was denied, I.R. No. 95-7, 20 NJPER 437 (¶25224 1994), arbitration commenced.

On May 15, 1995, the City filed a new application for interim relief seeking to enjoin a fifth day of arbitration scheduled for May 25. The basis of that request was a May 10 application by the City to the New Jersey Department of Personnel ("DOP") seeking a classification review or a "desk audit" for the

position of firefighter. The City contended that Title 11A and DOP regulations provide exclusive and specific recourse for the resolution of the grievance because DOP could determine that the duties the firefighters are performing are within the duties set forth for the position of firefighter.

On May 24, 1995, the Chairman denied the request for interim relief noting that the result of a desk audit may be relevant and admissible in the ongoing arbitration proceeding, but that it did not require restraining that proceeding. The Chairman further noted that to the extent the results of the desk audit might relate to the City's position on the merits of the grievance or the negotiability of the grievance, it could seek to have that evidence introduced before the arbitrator or here respectively. Neither party has submitted any additional information.

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

Thus, we do not determine whether the duties performed by the firefighters are duties of a higher rank or whether the contract provides that the grievants are entitled to additional compensation for performing those duties.

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. Paterson, 87 N.J. 78 (1981), outlines the steps for a scope of negotiations analysis for police officer 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. 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. [Id. at 92-93; citations omitted]

We will not restrain arbitration of a grievance involving firefighters unless the alleged agreement is preempted or would substantially limit government's policymaking powers.

The employer contends that N.J.A.C. 4A:3-3.4 preempts any agreement which would allow firefighters to serve temporarily as acting captains. That regulation provides:

No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules.

The employer argues further that Local 1078's recourse should be to request a classification review from the Department of Personnel. Alternatively, the City argues that the grievance challenges its prerogative to determine staffing levels.

Local 1078 asserts that the City's preemption argument was rejected in City of Camden, P.E.R.C. No. 93-43, 19 NJPER 15 (¶24008 1992), aff'd 20 NJPER 319 (¶25163 App. Div. 1994), and that its claim for extra compensation is negotiable. Local 1078 does not seek to prevent the City from assigning any duties, but claims that firefighters acting as captains are entitled to more pay.

As in Camden, we find that the regulations cited by the City do not preempt arbitration. The pertinent regulation precludes firefighters from routinely and indefinitely serving as captains without being reclassified. But nothing in the record establishes that a particular firefighter is always the person filling in for an absent captain or that the shortage of a captain always occurs in a particular company. Article 18, Section 3, indicates that such

assignments will be rotated among firefighters rather than assigned to the same individual. Thus we do not believe that this regulation expressly, specifically, and comprehensively prohibits occasional and temporary assignments of firefighters to serve as acting captains. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). Further, unlike Camden, this grievance does not seek to continue these acting assignments. Instead Local 1078 asserts that such assignments violate the contract unless the firefighters filling them receive captain's pay.

Compensation for temporary assignments to replace absent officers is mandatorily negotiable. See City of Garfield, P.E.R.C. No. 94-11, 19 NJPER 442 (¶24205 1991); South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); City of Paterson, P.E.R.C. No. 84-113, 10 NJPER 257 (¶15123 1984); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982); see also Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 App. Div. 1993); Montclair Tp., P.E.R.C. NO. 90-9, 15 NJPER 499 (¶20206 1989); City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26 (¶17010 1985); Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1979), aff'd NJPER Supp.2d 106 (¶88 App. Div. 1981).<sup>1/</sup>

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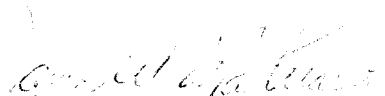
<sup>1/</sup> Local 1078 seeks an award of counsel fees claiming that the City failed to cite relevant precedent. We deny that request.



ORDER

The City's request for a permanent restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: July 28, 1995  
Trenton, New Jersey  
ISSUED: July 28, 1995