

P.E.R.C. NO. 90-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-90-42

FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12 contesting the City of Newark's decision to institute daily personnel status reports in its housing patrol unit. The Commission declines to restrain arbitration over the issue of whether the employer gave proper notice of the new reports.

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Appearances:

For the Petitioner, Grady B. McMillon, Assistant
Corporation Counsel

For the Respondent, Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

DECISION AND ORDER

On January 25, 1990, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12. The grievance asserts that the City violated its collective negotiations agreement with the FOP when it unilaterally instituted daily personnel status reports in its housing patrol unit.

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

The FOP represents the City's police officers. The parties entered into a contract effective from January 1, 1987 through December 31, 1988. An interest arbitration award governs employment

conditions from January 1, 1989 through December 31, 1991. The grievance procedure ends in final and binding arbitration.

Lieutenant George Green commands the City's housing patrol unit. On October 14, 1988, he instituted a policy requiring supervisors to prepare daily personnel status reports. According to a memorandum from Green to the supervisors, the purpose of these reports was "to enhance unit efficiency and provide a means of monitoring and comparing individual personnel performance." The reports would also be used "as a tool for in-service training to improve quality of required job tasks and proper career development." The memorandum required that the daily reports grade officers' appearances and the quality of submitted reports (fair, good, or excellent); break down arrests by type and give corresponding numerical values; and list the number of summonses, field interrogations, service calls, police actions, vertical patrols and hours worked. Green later revised the method for rating appearance from a numerical grade to a satisfactory/unsatisfactory rating. He also eliminated numerical values for different types of arrests and requested only the number of arrests.

On November 14, 1988, the FOP filed a grievance asserting that the daily status reports violated contractual articles entitled Recognition, Maintenance of Standards, Discrimination and Coercion and Fully-bargained Provisions.

On November 28, 1988, the police director denied the grievance.

On December 23, 1988, the FOP demanded arbitration. The case was then apparently held in abeyance while the FOP reviewed the grievance.

On August 17, 1989, the City wrote the FOP that it would not agree to keep the case on hold indefinitely and that it would file a scope petition if the grievance was not withdrawn. This petition followed.

The employer asserts that it has a non-negotiable right to establish the criteria for evaluating police officers in the housing patrol unit. The FOP responds that the grievance presents legally negotiable issues concerning the timing of evaluation reports and notice of new evaluation criteria.

The scope of negotiations for police and fire employees 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. Compare Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981) with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson outlines the steps of a scope of negotiations analysis for police 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. [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. [87 N.J. at 92-93; citations omitted]

Because the dispute arises as a grievance, arbitration would be permitted if the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). No preemption arguments have been made so we focus on whether the grievance, if sustained, would substantially limit governmental policymaking. We consider that question in the abstract and express no opinion about the contractual merits. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

An employer must negotiate over evaluation procedures, but not over evaluation criteria. Bethlehem Tp. Ed. Ass'n v. Bethlehem Bd. of Ed., 91 N.J. 38 (1982); Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO, 179 N.J. Super 80 (App. Div. 1981). Notice of a change in evaluation criteria is also negotiable. Id.

On balance, we believe that the City's decision to require these daily status reports was non-negotiable. The reports essentially monitor the overall performance of the housing patrol unit. It does not appear that there were any adverse actions taken against any unit employees due to the adoption of the status

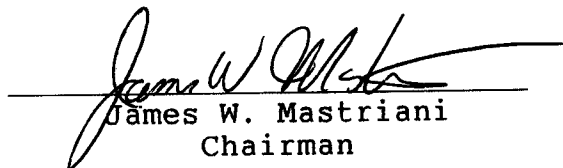
reports. Only two entries call for subjective and individualized judgment. These entries are limited to appearance and report-writing and are not part of a formal assessment focusing on that individual employee's overall performance. Contrast Brookdale Community Coll., P.E.R.C. No. 84-84, 10 NJPER 111 (¶15058 1984). The remaining fourteen entries concern the compilation of statistics, e.g., the number of arrests, summonses, interrogations, and police actions. We believe management has a right to compile these statistics. We therefore restrain arbitration to the extent the grievance contests the decision to institute these status reports.

We do not, however, restrain arbitration over the issue of whether the employer gave proper notice of the new reports. That is a severable and mandatorily negotiable issue. City of Elizabeth and Elizabeth Fire Officers Ass'n, Local 2044, IAFF, 198 N.J. Super 382 (App. Div. 1985).

ORDER

Binding arbitration is restrained to the extent the grievance contests the decision to institute daily status reports.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
April 25, 1990
ISSUED: April 26, 1990