

P.E.R.C. NO. 2003-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DIVISION
OF STATE POLICE),

Petitioner,

-and-

Docket No. SN-2002-68

STATE TROOPERS NON-COMMISSIONED
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration of a grievance filed by the State Troopers Non-Commissioned Officers Association. The grievance contests the selection of an employee to serve as acting criminal investigation officer. The substantive assessment of relative qualifications is preeminently a policy determination not subject to binding 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, David Samson, Attorney General
(Sally Ann Fields, Senior Deputy Attorney General, on the
brief)

DECISION

On May 30, 2002, the State of New Jersey (Division of
State Police) petitioned for a scope of negotiations
determination. The employer seeks a restraint of binding
arbitration of a grievance filed by the State Troopers
Non-Commissioned Officers Association. The grievance contests the
selection of an employee to serve as acting criminal investigation
officer.

The employer has filed a brief and exhibits. The
Association has not filed a brief. These facts appear.

The Association represents sergeants, detective
sergeants, sergeants first class and detective sergeants first

class. The parties have entered into a collective negotiations agreement effective from July 1, 2000 through June 30, 2004. The grievance procedure ends in binding arbitration of claimed violations of the agreement.

Article VIII of the agreement is entitled Out-of-Title Work. It provides, in part: "Out-of-title work assignments occur when a member is formally designated to occupy a position in an acting capacity which is structured at a higher rank in the then currently published staffing tables of the Division." It also provides: "Any decision to initiate or terminate any acting assignment shall be within the sole discretion of the Superintendent and shall not be subject to any grievance procedure."

On February 26, 2002, the Association filed a grievance on behalf of Gerald T. Barbato challenging the selection of a candidate to the position of Troop "D" Acting Criminal Investigation Officer effective March 9, 2002. As relief, the grievance seeks to have the selection process nullified and the candidate removed and replaced with Barbato; copies of all documentation, resumes, and notes associated with this selection; the scoring process and all final scores; and the formal list of candidates forwarded to Division headquarters.

The grievance was denied and the Association demanded arbitration. This petition ensued.

The employer argues that transfer and reassignment decisions are an inherent managerial prerogative. It relies on State of New Jersey (Div. of State Police), P.E.R.C. No. 2000-61, 26 NJPER 98 (¶31040 2000), recon. den. P.E.R.C. No. 2000-80, 26 NJPER 206 (¶31083 2000).

The employer has submitted a brief that it filed in a prior case involving these parties. In that case, we restrained arbitration of four grievances filed by the Association, finding that the superintendent's substantive decision to transfer or reassign a public employee is preeminently a policy determination and that characterizing a transfer or reassignment of a State trooper as disciplinary does not make that personnel action negotiable. We declined to restrain binding arbitration of a fifth grievance to the extent it claimed that the employer violated contractual procedures allegedly applicable to filling an acting unit head position. State of New Jersey (Div. of State Police), P.E.R.C. No. 2002-78, 28 NJPER 265 (¶33102 2002).

The Association did not file a brief.

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 cannot consider the contractual merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations is broader for police officers and firefighters than for other public employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these tests for determining the negotiability of a subject affecting police officers:

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]

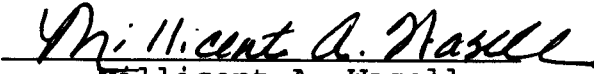
Arbitration of grievances is permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

We grant the employer's request for a restraint of binding arbitration over the substantive decision not to assign Barbato as an Acting Criminal Investigation Officer. The substantive assessment of relative qualifications is preeminently a policy determination. City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998); Ridgefield Park at 156; State of New Jersey (Div. of State Police), P.E.R.C. No. 2000-60, 26 NJPER 97 (¶31039 2000). The employer does not address the requests for documents and information about the scoring process. Accordingly, we issue no order on those portions of the grievance.

ORDER

Binding arbitration over the substantive decision not to assign Gerald T. Barbato as an Acting Criminal Investigation Officer is restrained.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Mastriani, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: September 26, 2002
Trenton, New Jersey
ISSUED: September 27, 2002