

P.E.R.C. NO. 89-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Petitioner,

-and-

Docket No. SN-89-3

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 692,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the International Association of Firefighters, Local 692 against the Township of West Orange. The grievance asserts that two firefighters were improperly denied contractual benefits because the Township had used the wrong appointment date for calculating seniority. The Commission finds that the seniority date for purposes of contractual benefits is arbitrable.

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Appearances:

For the Petitioner, Marvin Corwick, Business Administrator

For the Respondent, Fox and Fox, Esqs.  
(Dennis J. Alessi, of counsel)

DECISION AND ORDER

On July 11, 1988, the Township of West Orange ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks a restraint of binding arbitration of a grievance filed by the International Association of Firefighters, Local 692 ("IAFF"). The grievance asserts that two fire fighters were improperly denied contractual benefits because the Township had used the wrong appointment date for calculating seniority.

The parties have filed briefs and exhibits.<sup>1/</sup> These facts appear.

IAFF is the majority representative of the Township's uniformed fire fighters. The parties entered a collective negotiations agreement effective January 1, 1987 through December

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<sup>1/</sup> IAFF's request to file a second reply brief was denied.

31, 1989. That agreement requires that a seniority list be maintained and ties such benefits as salary increments, longevity payments, "seniority days," vacations, and supplemental compensation upon retirement to the length of time worked. The grievance procedure ends in binding arbitration.

Michael Merwin and Michael Tumminello were on a Department of Personnel ("DOP") eligibility list for appointment as fire fighters. According to IAFF, they were scheduled to be appointed in July 1987, but were denied employment based on psychological evaluations. They appealed and DOP, accepting the recommendations of the Medical Review Panel, reinstated them to the eligibility list. On January 4, 1988, they were sworn in as fire fighters. They began work the next day.

A question arose about the correct appointment date for seniority purposes under Civil Service statutes and regulations. On May 3, 1988, a DOP Personnel Management Analyst I ruled that for purposes of promotion and layoffs the seniority date for these two fire fighters would be July 17, 1987 and that for purposes of their working test period the payroll date would be January 5, 1988.

The Township used January 5, 1988 as the appointment date for purpose of calculating contractual benefits. Tumminello and Merwin filed grievances asserting that their seniority dates for purposes of contractual benefits should be the same as for purposes of promotions and layoffs: July 17, 1987. The Township denied these grievances, IAFF sought binding arbitration, and this petition ensued.

The Township contends that it has a prerogative to determine an employee's starting date for purposes of computing contractual benefits and that DOP has exclusive jurisdiction to review that determination. IAFF responds that under City of Newark, P.E.R.C. No. 88-106, 14 NJPER 336 (¶19126 1988), the seniority date for purposes of contractual benefits is arbitrable.


These grievances are legally arbitrable under Newark. We exhaustively analyzed negotiability precedents and Civil Service statutes and regulations in explaining why that grievance was arbitrable. We rely on that discussion here.

For scope of negotiations purposes, Newark is not distinguishable simply because there the grievant had a scheduled swearing-in date before he was improperly removed from the eligibility list. Whether that fact makes a difference on the merits of the grievances is not for us to decide. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978). Also, DOP's date for purposes of the statutory working test period does not preempt an earlier date for purposes of calculating contractual benefits such as compensation. Regardless of when an employee should have been appointed, an employer must observe an employee during the statutory working test period. But for contractual purposes, an employer may (but need not) agree to remedy an improper delay in appointment by providing an earlier seniority date. CWA v. Monmouth Cty. Bd. of Social Services, 96 N.J. 442 (1984).

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolin, Reid and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained and Commissioner Johnson was not present.

DATED: Trenton, New Jersey  
December 19, 1988  
ISSUED: December 20, 1988