

P.E.R.C. NO. 96-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-96-26

P.B.A. LOCAL No. 314,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Monmouth County Sheriff's request for a restraint of binding arbitration of a grievance filed by PBA Local No. 314 to the extent, if any, the grievance seeks enforcement of N.J.S.A. 40A:9-5. The request is otherwise denied. The grievance concerns a memorandum filed by a sheriff's officer alleging that several sheriff's officers have suffered from a "discriminatory salary practice." The Commission finds that compensation issues are mandatorily negotiable and legally arbitrable unless preempted. However, the Commission finds that N.J.S.A. 40A:9-5 was declared unconstitutional and restrains arbitration to the extent, if any, the grievance seeks enforcement of that statute.

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Appearances:

For the Petitioner, Robert J. Hrebek, attorney

For the Respondent, Klatsky & Klatsky, attorneys
(Michael A. Bukosky, of counsel)

DECISION AND ORDER

On September 11, 1995, the Monmouth County Sheriff petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a memorandum filed by a sheriff's officer represented by P.B.A. Local No. 314. The memorandum alleges that several sheriff's officers have suffered from a "discriminatory salary practice."

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

Local No. 314 represents sheriff's officers. The parties entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1997. Before this contract, interest arbitration proceedings had produced a contract effective from January 1, 1991 through December 31, 1993. The grievance

procedure in the current contract ends in binding arbitration. The current contract also contains a provision addressing the salary guide placement of employees with prior service in the title of County correction officer.

Craig Cole is a sheriff's officer. He began working in this position on February 13, 1990.

On November 1, 1994, Cole wrote a memorandum to the sheriff asserting that there was a "discriminatory salary practice" within the Law Enforcement Division of the Sheriff's Office. According to the memorandum, this "unfair salary practice" began on September 3, 1990 when a sheriff's officer was allowed to carry over seniority credit from a position in the Corrections Division after he resigned from that position and was then rehired as a sheriff's officer in the Law Enforcement Division. The practice allegedly continued when five other officers were also allowed to carry over seniority credits upon resigning from one division and being rehired in another. The memorandum further alleged that, pursuant to a settlement of an earlier arbitration proceeding involving these officers and the Sheriff and the County, these officers were allowed to retain their salaries from the Corrections Division. According to the memorandum, the practice resulted in some employees receiving higher salaries than other employees with fewer years of service. The memorandum asserted that the employer had acted "injudiciously under N.J.A.C. 11A:4-16" which allegedly prohibits carrying over

credit for any purpose for prior service in a department.^{1/} The memorandum asked the sheriff to meet with Cole and five other officers to "discuss a solution to this recurring discriminatory practice."

The record does not contain a response to this memorandum. On June 23, 1995, Local No. 314 demanded arbitration. This petition ensued.

The employer asks us to restrain arbitration for four reasons: (1) N.J.S.A. 40A:9-5 is unconstitutional; (2) the arbitrator cannot interpret N.J.S.A. 11A:4-16; (3) this case is "a veiled attempt to re-negotiate the salary provision in the existing contract which [has] just recently been settled"; and (4) the allegedly unfair salary practice was the subject of an earlier arbitration.

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

^{1/} According to the employer, N.J.A.C. 11A:4-16 is probably a miscitation of either N.J.S.A. 11A:4-16 or N.J.S.A. 40:11-5. The employer asserts that the former statute has no relevance to this dispute and the latter statute was recodified as N.J.S.A. 40A:9-5 and declared unconstitutional as special legislation.

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. We specifically decline to consider the employer's assertion that Local No. 314 is simply seeking to renegotiate salary provisions or to circumvent an earlier arbitration settlement. These contentions can be raised in an arbitration proceeding. We consider only the abstract negotiability of the memorandum's claim that an unfair salary practice exists.

Compensation issues are mandatorily negotiable and legally arbitrable unless preempted. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). This principle governs this case. We agree, however, that an arbitrator cannot enforce an unconstitutional statute. Since N.J.S.A. 40A:9-5 was declared unconstitutional in Kenney v. East Brunswick Tp., 172 N.J. Super. 45 (App. Div. 1980), we will restrain arbitration to the extent, if any, the grievance seeks enforcement of that statute. Since constitutional statutes setting employment conditions are incorporated by reference into collective negotiations agreements, we will not restrain arbitration of any claim alleging that N.J.S.A. 11A:4-16 has been violated. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

ORDER

The request of the County of Monmouth Sheriff for a restraint of binding arbitration is granted to the extent, if any, the grievance seeks enforcement of N.J.S.A. 40A:9-5. The request is otherwise denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: March 28, 1996
Trenton, New Jersey
ISSUED: March 29, 1996