

P.E.R.C. NO. 2001-57

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Petitioner,

-and-

Docket No. SN-2001-1

PARAMUS P.B.A. LOCAL 186,

Respondent.

SYNOPSIS

The Public Employment Relations Commission addresses the negotiability of an administrative fee provision in an agreement between the Borough of Paramus and the Paramus P.B.A. Local 186. The Commission also addresses the legal arbitrability of a grievance contesting an increase in the administrative fee charged to private employers requesting police services. First, the Commission holds that the administrative fee provision is not a term and condition of employment and therefore not mandatorily negotiable. This provision may not be submitted to interest arbitration without the Borough's consent. Next the Commission holds that the administrative fee provision involves an economic issue of administrative cost and does not determine an issue of governmental policy and is therefore permissively negotiable and may be submitted 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, Ruderman & Glickman, P.C., attorneys  
(Joel G. Scharff, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Leon B. Savetsky, on the brief)

DECISION

On July 3, 2000, the Borough of Paramus petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Paramus P.B.A. Local 186. The grievance contests an increase in the administrative fee charged to private employers requesting police services.

On August 11, 2000, the Borough amended its petition. Since the PBA seeks to continue the administrative fee provision in a successor contract, the Borough also seeks a determination that this provision is not mandatorily negotiable.

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

The PBA represents all police officers. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1997 through December 31, 1999. The grievance procedure ends in binding arbitration.

Article XLIV of the contract is entitled "Police Services." This article provides, in part:

Section 1. General Police Services

A. The Borough shall, upon request, provide police services to any person conducting business within the municipality, the cost to be borne by the business requesting the police service. The police officer shall be paid by the Borough and the Borough reimbursed by the business. The police service shall be limited to service where the good and welfare and safety of the general public is involved....

B. The rate of salary for police services for all police officers shall be one and one half times the regular pay of the current schedule for a top patrolman....

C. In addition to the salary paid by the business, the Borough shall charge an additional ten percent (10%) per hour administration fee to offset any expense occurred by the Borough. The Borough shall have a right to cease service to any business who fails to reimburse the Borough within thirty (30) days after receipt of bill for service previously rendered.

This article was first included in the 1991-1993 contract, based on an interest arbitration award directing the addition of a police services article consistent with existing practice. Subsequent contracts have retained that article.

The Borough and the PBA are now involved in negotiations to replace the 1997-1999 contract. The PBA seeks to retain Article XLIV. The PBA has petitioned for interest arbitration.

Notwithstanding the contractual salary rate, the practice for five to six years has been to pay all police officers a flat rate of \$45 per hour. The Borough therefore charged businesses \$45 an hour, plus a ten percent administrative fee of \$4.50, for a total of \$49.50 per hour for the services of off-duty police officers.

On April 25, 2000, the Borough adopted Ordinance 00-13. That ordinance required that Paramus police officers be employed by private employers only in the capacity of a police officer and that any employer seeking to employ an off-duty police officer make a request to the police department. In response to our inquiry, the Borough clarified that the ordinance applies only to security details in which the contractor has entered into a fee/payment relationship with the police department.

Most importantly for purposes of this litigation, Ordinance 00-13 increased the administrative/equipment/vehicle fee to \$20 per hour. The ordinance thus effectively charges a private employer a rate of \$65 per hour to use off-duty police officers. In addition, the Borough charges employers the actual cost of any materials or supplies used, together with an administrative fee of 10% of that cost.

The PBA filed a grievance asserting that the Borough violated Article XLIV by raising the administrative fee. The Borough denied the grievance and the PBA demanded arbitration. This petition ensued.

The PBA has also filed an unfair practice charge alleging that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally increasing the administrative fee. A Commission designee denied interim relief, concluding that negotiations were not required because the administrative fee is not compensation to police officers, but part of the administration of the off-duty program. I.R. No. 2001-2, 26 NJPER 397 (¶31156 2000).

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 consider the contractual merits of this grievance or any contractual defenses the Borough may have.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

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]

Neither party has asserted that a specific statute or regulation controls this dispute.

We first consider whether the administrative fee provision is a term and condition of employment. We hold it is not. It does not specify what the employer will pay an employee, but rather what a business will pay the employer given the employer's administrative costs in making police services available. The amount of the

administrative fee may indirectly affect the likelihood that police officers will be employed by businesses to perform police services, but it does not intimately and directly affect employee work and welfare. Compare NLRB v. Laborers Local 264 (D&G Constr. Co.), 529 F.2d 778, 91 LRRM 2209 (8th Cir. 1976), enforcing sub nom. Laborers Local 264 (J.J. Bolton), 216 NLRB 40, 88 LRRM 1192 (1975) (provision concerning employer's administrative costs for fringe benefit program is not mandatorily negotiable; it does not regulate matter within employer-employee relationship and potential effect on employees is remote, indirect, and incidental). See also Hardin, The Developing Labor Law at 938 (3d ed. 1992) (administrative expense funds are permissively negotiable). For these reasons, we hold that the administrative fee provision of Article XLIV is not mandatorily negotiable. Dover Tp., I.R. No. 98-21, 24 NJPER 299 (¶29142 1998), recon. den. on other grounds P.E.R.C. No. 98-164, 24 NJPER 358 (¶29171 1998). This provision may not be submitted to interest arbitration without the Borough's consent.

We next consider whether the administrative fee provision of Article XLIV is permissively negotiable. We note that even if it is, this provision would remain in effect only during the term of the previous contract and the employer may delete it from the next contract by refusing to negotiate over it. Paterson at 83.

By creating a permissive category of negotiations, the Legislature recognized the public interest in honoring negotiated agreements and avoiding the labor relations instability that comes

from broken agreements. However, such an agreement is not enforceable, despite that public interest, when it substantially limits governmental policymaking powers. These parties have negotiated an administrative fee provision and included it in several contracts. The provision covers a purely economic issue of administrative cost and does not determine an issue of governmental policy. The administrative fee agreement thus falls within Paterson's description of the permissive category as including items that neither intimately and directly affect employee work and welfare nor substantially limit governmental policymaking. Id. at 93. We therefore hold that the administrative fee provision is permissively negotiable. Whether this alleged agreement survived the expiration of the contract is a issue of contract interpretation outside our jurisdiction. Ridgefield Park. We therefore decline to restrain grievance arbitration.


ORDER

The administrative fee provision of Article XLIV is not mnadatorily negotiable and cannot be submitted to interest arbitration without the Borough's consent.



The administrative fee provision of Article XLIV is permissively negotiable and the Borough's request for a restraint of grievance arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: March 29, 2001  
Trenton, New Jersey  
ISSUED: March 30, 2001