

P.E..R.C. NO. 93-87

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VILLAGE OF RIDGEWOOD,

Petitioner,

-and-

Docket No. SN-93-36

FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION LOCAL NO. 47,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Firemen's Mutual Benevolent Association Local No. 47 against the Village of Ridgewood. The grievance asserts that the Village violated the article governing salaries in the parties' collective negotiations agreement when it conditioned the pay status of "Senior Firefighter Engineer" on subjective testing as well as the standards set forth in the agreement. The Commission finds that placement in pay status is a mandatorily negotiable compensation issue.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, attorneys  
(M. Joan Foster, of counsel)

For the Respondent, Michael E. Spinato, attorney

DECISION AND ORDER

On November 17, 1992, the Village of Ridgewood petitioned for a scope of negotiations determination. The Village seeks a restraint of binding arbitration of a grievance filed by Firemen's Mutual Benevolent Association Local No. 47. The grievance asserts that the Village violated the article governing salaries in the parties' collective negotiations agreement when it conditioned the pay status of "Senior Firefighter Engineer" on subjective testing as well as the standards set forth in the agreement.

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

Local No. 47 represents the Village's "full-time uniformed firemen," with certain exceptions including fire officers and supervisory employees. The parties entered into a collective negotiations agreement effective from January 1, 1991 through December 31, 1992. Article 8 is entitled Salaries. It sets the base salaries for employees during their first year, second year, and third year. For employees hired after July 1, 1987, a fourth year salary step has been added. It then sets a maximum salary after the lower steps have been completed. The next section, 8.03, provides:

When an employee, after seven (7) years of service with the Ridgewood Fire Department, meets the requirement by achieving a course completion and certification in accordance with NFPA [National Fire Protection Association] Standard 1002, said employee shall be designated as "Senior Firefighter Engineer" and shall be compensated by an increased base rate of pay. "Senior Firefighter Engineer" pay status shall be a base pay of maximum step Firefighter increased by one-half (1/2) between maximum step Firefighter and the base pay rate for Fire Lieutenant.

The grievance procedure ends in binding arbitration.

According to the Village, when section 8.03 was included in the 1987-1988 contract, the parties understood that the fire chief, Robert Missel, would establish the requirements for certification in accordance with NFPA Standard 1002. That standard addresses the professional qualifications required for the position of fire apparatus driver/operator; it requires candidates to demonstrate their abilities in various disciplines.

On January 20, 1988, Missel issued General Order #146 to all personnel. The order stated that a new pay position -- Senior Firefighter Engineer -- had been established. The memorandum listed these prerequisites for that position:

1. Completion of (7) years of service with the Ridgewood Fire Department.
2. Certification of Firefighter III.<sup>1/</sup>
3. Completion and certification of the following curriculum at the Bergen County Fire Academy or other approved Fire Academy:
  - A. Pump Operator Course - 36 hrs.
  - B. Aerial Operations Course - 12 hrs.
  - C. Truck Company Operations Course - 36 hrs.
  - D. Emergency Vehicle Drivers Course - 9 hrs.
4. In accordance to N.F.P.A. 1002 Chapters 1 thru 6 as applied to Ridgewood Fire Department equipment and operations.

The order added that an applicant had to demonstrate competence by actual use of each of the performance objectives; that use could be supplemented by simulation, explanation, and/or illustration. If the firefighter met these criteria, the firefighter would then receive the contractual pay raise.

Five persons have been certified as Senior Firefighter Engineers since January 1, 1988. The chief assigns these senior employees to serve as Acting Lieutenants in the absence of lieutenants and may assign them additional responsibilities.

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<sup>1/</sup> NFPA Standard 1002 requires certification as Firefighter II, but other departmental regulations require certification as Firefighter III.

On June 13, 1992, Local No. 47's president filed a grievance. The grievance asserted that between March 10 and April 11, 1992, several firefighters had met the contractual requirements of training, coursework, and NFPA certification for the position of Senior Firefighter Engineer, but they had not yet received that designation.

On June 15, 1992, Captain Robert Thomsen responded to the grievance. He stated that he had asked the deputy fire chief several times when the tests for Senior Firefighter Engineer would be administered, but the tests had not been scheduled yet. Some delay in scheduling apparently resulted from a move to a new fire headquarters.

Local No. 47 then appealed to Missel. On June 19, 1992, Missel wrote a letter to the union president stating that the budgets had not been approved so there was no funding available for payments. The letter also stated that the deputy chief had been directed to proceed by July 15, 1992 "with the examination and practical work to certify the personnel who have completed all the course pre-requisites."

On June 25, 1992, Local No. 47 appealed to the Village Manager. Its letter stated that several department members had completed the required training, and budget approval was not a negotiated condition to being designated and paid as a Senior Firefighter Engineer. It asked that "the members with seven years of service who have completed the prescribed requirements be

designated Senior Firefighter Engineers immediately, with their pay increase retroactive to date of application."

On July 10, 1992, Local No. 47 submitted another letter to the Village Manager. It asserted that firefighters were contractually entitled to be designated as Senior Firefighting Engineer and to receive an increased base rate of pay if they had: (a) served seven years, (b) completed a course in accordance with NFPA Standard 1002, and (c) received certification of that course completion. It also asserted that any further testing to attain the status of Senior Firefighter Engineer would violate the contract and therefore it would "prohibit any potential designees from being subjected to any further testing."

On July 21, 1992, the Village Manager wrote a letter denying the grievance. He stated that firefighters meeting certification requirements and passing their evaluations would be compensated as Senior Firefighter Engineers retroactive to the date they completed all requirements besides the evaluation. He also asserted that the 1988 General Order had been issued pursuant to a negotiated understanding between the former Village Manager and Local No. 47; the parties had a past practice of following the procedure set forth in the General Order; and thus the Village had a contractual right to conduct further evaluations for certification.

On July 28, 1992, Local No. 47 demanded binding arbitration. It identified this grievance to be arbitrated:

Paragraph 8.03 of existing Agreement

Village of Ridgewood claims an ability to conduct further subjective testing of candidates in addition to standards set forth in Agreement.

An accompanying letter from Local No. 47's attorney asserted that section 8.03 of the collective negotiations agreement took precedence over any contrary general order or past practice. This petition ensued.

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]

We thus cannot consider the contractual merits of the parties' positions. In particular, we cannot determine whether, as Local No. 47 contends, the firefighters have satisfied the contractual requirements for being paid as a Senior Firefighter Engineer or, as the Village contends, the Village has a contractual right to require them to pass further tests.

The scope of negotiations for police officers and firefighters 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. 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:

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]

We will not restrain arbitration of a grievance involving firefighters unless the alleged agreement is preempted or would substantially limit government's policymaking powers. Preemption is not an issue here.

The demand for arbitration centers on a dispute over the interpretation of the contractual article governing salaries. That article sets the base salaries for the first three (or four) years, and states the maximum salary thereafter, subject to a higher pay status of Senior Firefighter Engineer if the employee has served at



least seven years and has met certain other preconditions. The specific contractual dispute, which we cannot resolve, is over the preconditions for a particular pay status. Placement in a pay status is a mandatorily negotiable compensation issue. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 333 (1989); Wall Tp., P.E.R.C. No. 92-95, 18 NJPER 165 (¶23079 1992); East Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990), aff'd App. Div. Dkt. No. A-3729-90T1 (9/22/92); Essex Cty., P.E.R.C. No. 87-48, 12 NJPER 835 (¶17321 1986) and Essex Cty., P.E.R.C. No. 86-149, 12 NJPER 536 (¶17201 1986), consol. and aff'd, App. Div. Dkt. Nos. A-5803-85T7 and A-1458-86T7 (6/30/87).


The Village argues that "[d]esignating a firefighter as a "Senior Firefighting Engineer" is analogous to a promotion, in that a "Senior Firefighting Engineer" possesses additional skills and qualifications, and is assigned additional supervisory duties in the form of assignments as Acting Lieutenant" (Brief at 2). But the salary article in dispute addresses the pay status of non-supervisory employees, not supervisory positions or duties. Regardless of which interpretation of the salary article is correct, that article does not restrict the employer's ability to determine the qualifications for acting lieutenant. It simply provides that once employees meet certain contractual requirements, they are entitled to a pay increase. We conclude that the alleged agreement concerning the pay status of Senior Firefighter Engineer would not

substantially limit the Village's policymaking powers. We thus decline to restrain binding arbitration.

ORDER

The request of the Village of Ridgewood for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: March 29, 1993  
Trenton, New Jersey  
ISSUED: March 30, 1993