

P.E.R.C. NO. 93-105

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF AVALON,

Petitioner,

-and-

Docket No. SN-93-76

AVALON PBA LOCAL NO. 59,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Avalon PBA Local No. 59 against the Borough of Avalon. The grievance asserted that the Borough violated the parties' collective negotiations agreement when it advised its employees that it would not pay them EMT compensation for 1992. The restraint is granted only to the extent the grievance contests the requirement that police officers perform EMT and basic first aid/CPR services. The request for a restraint of binding arbitration is otherwise denied.

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Appearances:

For the Petitioner, Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly, P.A., attorneys (Lawrence Pepper, Jr., of counsel)

For the Respondent, Loccke & Correia, P.A., attorneys (Michael J. Rappa, of counsel)

DECISION AND ORDER

On March 9, 1993, the Borough of Avalon petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Avalon PBA Local No. 59. The grievance asserts that the Borough violated the parties' collective negotiations agreement when it advised its employees that it would not pay them EMT compensation for 1992.

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

The PBA represents the PBA's police officers, including the ranks of patrol officer and sergeant. The parties entered into a collective negotiations agreement effective from January 1, 1990 through December 31, 1991. Article III-A is entitled Maintenance and Modification of Work Rules. Paragraph B provides:

Proposed new rules or modifications of existing rules governing working conditions, written or unwritten, which are not exclusively within the discretion of management, shall be negotiated with the majority representative prior to implementation.

The grievance procedure ends in arbitration.

On June 1, 1987, the Borough Council adopted a resolution authorizing an incentive program for employees to be certified as Emergency Medical Technicians and to be trained in basic first aid/CPR skills. The resolution stated that already certified employees would receive \$500 upon acceptance into the program and \$500 every year thereafter while enrolled in the program; employees not already certified would receive \$1000 upon certification and \$500 in following years; and employees would receive compensatory time off or straight-time pay while enrolled in school. The resolution also called for incentives for employees completing training in basic first aid/CPR services and for annual payments to volunteers performing EMT, basic first aid, and CPR services. The incentive program was initiated at the request of the rescue chief who wanted to have six employees volunteer to be certified as Emergency Medical Technicians and four employees volunteer to be trained in basic first aid/CPR skills.

On September 25, 1991, the Council rescinded this resolution. The resolution stated that the 1987 resolution was no longer necessary because the Borough had ensured the availability of Emergency Medical Technicians by budgetary appropriations, personnel

actions and other measures. The Borough then discontinued payments under the 1987 resolution.

According to the Borough, the incentive payments were made to attract volunteers and were never intended to be considered compensation for employees performing their ordinary job responsibilities. When the Borough made EMT and first aid/CPR training a job requirement for police officers, it was no longer necessary to pay incentives to attract volunteers. That training is allegedly done during normal work hours. The police captain has issued an order stating that failure to maintain EMT certification will result in disciplinary action.

On August 25, 1992, the PBA filed a grievance. It asserted that the Borough had advised police officers that it would not pay them any EMT compensation for 1992. The employer denied this grievance.

On September 22, 1992, the PBA demanded arbitration. It identified the grievance as "compensation grievance (EMT)." This petition ensued.

The Borough contends that it has a non-negotiable right to require police officers to perform EMT and basic first aid/CPR services as part of their job responsibilities. It notes, for example, that the job description for "police officer" promulgated by the New Jersey Department of Personnel states that a police officer "examines ill or injured persons, and administers the appropriate first aid treatment in order to prevent further injury or loss of life."

The PBA responds that even if the Borough has a right to require police officers to obtain EMT certifications and provide EMT services, compensation is a severable and mandatorily negotiable subject. It analogizes such compensation to premium pay for temporarily working in a higher title.

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 do not consider the PBA's contractual contention that Article III-A obligated the Borough to negotiate before discontinuing incentive payments or the Borough's contractual contention that rescission of the 1987 resolution was "exclusively within the discretion of management" under that article.

In City of Orange Tp., P.E.R.C. No. 90-119, 16 NJPER 392 (¶21162 1990), we held that the public employer had a non-negotiable right to require its firefighters to take EMT training and we restrained arbitration over a grievance contesting that requirement. We found that EMT techniques were relevant to the duties contained in the Department of Personnel job description for

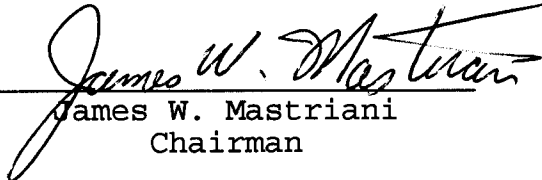
firefighters and that EMT techniques might be needed at a fire. That holding and that analysis apply here as well. We will accordingly restrain arbitration over the PBA's grievance to the extent it contests the requirement that police officers perform EMT and basic first aid/CPR services.

No compensation claim was at issue in City of Orange Tp. We agree with the PBA that a compensation claim for EMT training, certification, and services is severable and mandatorily negotiable. Whether the employer has a contractual obligation to negotiate over such compensation under Article III-A is a matter for the arbitrator to decide.

ORDER

The request of the Borough of Avalon for a restraint of binding arbitration is granted to the extent the grievance contests the requirement that police officers perform EMT and basic first aid/CPR services. The request for a restraint of binding arbitration is otherwise denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: May 20, 1993
Trenton, New Jersey
ISSUED: May 21, 1993