

P.E.R.C. NO. 2003-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DIVISION  
OF STATE POLICE),

Petitioner,

-and-

Docket No. SN-2002-70

STATE TROOPERS NON-COMMISSIONED  
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration of a grievance filed by the State Troopers Non-Commissioned Officers Association. The Commission grants the restraint to the extent, if any, the grievance seeks to challenge the effective date of a state trooper's promotion to sergeant. The Commission concludes that the employer's interest in knowing the results of internal investigations before permanently promoting employees outweighs the employees' interest in being promoted. The Commission also restrains arbitration over any claim that the retroactive date of the promotion constituted a new disciplinary procedure or sanction. Such issues are neither negotiable nor legally arbitrable for state police.

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, David Samson, Attorney General  
(Sally Ann Fields, Senior Deputy Attorney General,  
on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Merick H. Limsky, on the brief)

DECISION

On May 30, 2002, the State of New Jersey (Division of State Police) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the State Troopers Non-Commissioned Officers Association. The grievance contests the effective date of a state trooper's promotion to the rank of sergeant.

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

The Association represents sergeants, detective sergeants, sergeants first class and detective sergeants first

class. The parties have entered into a collective negotiations agreement effective from July 1, 2000 through June 30, 2004. The grievance procedure ends in binding arbitration of claimed violations of the agreement.

Article XX is entitled Non-discrimination. It provides that the provisions of the agreement shall apply equally to all employees and that there shall be no intimidation, interference, or discrimination.

Article XXIX is entitled Complete Agreement. It provides, in part, for the maintenance of past practices.

On September 1, 2001, Trooper James Hand filed a grievance stating:

I grieve as arbitrary, capricious, and discriminatory, the assigned "effective date" of my promotion to the rank of Sergeant First Class currently listed as July 19, 2001. I have occupied the position without interruption since September 19, 1999. This is in violation of existing agreement Article XXV "Complete Agreement" and Article XXVI "Non-Discrimination."<sup>1/</sup>

As a remedy, the grievance seeks the immediate revision of the effective date to September 19, 1999 and retroactive compensation, including interest and seniority.

The grievance was denied. On April 11, 2002, the Association demanded arbitration.

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<sup>1/</sup> In the parties' 2000-2004 agreement, the Complete Agreement clause is XXIX and the Non-Discrimination clause is XX.

The employer states that Hand's promotion was held in abeyance due to a pending internal investigation. The matter was resolved on January 19, 2001. Hand was issued a written reprimand, a three day suspension, and a six-month period of promotional ineligibility. On August 20, the Attorney General recommended that Hand be promoted to the rank of sergeant first class effective July 19, 2001.

The State argues that the substantive decision of when to promote is a managerial prerogative and that an arbitrator cannot second-guess the superintendent's decision as to whether or when to promote a member. It relies on State of New Jersey (Div. of State Police), P.E.R.C No. 2002-51, 28 NJPER 172 (¶33063 2002).

The Association rejects the employer's reliance on prior cases involving promotions and asserts that this case contains different facts. The Association argues that in this case the superintendent deviated from established disciplinary procedures and the contractual requirement that members be treated equally. The Association seeks to have an arbitrator decide if the retroactive date of the promotion was appropriate.

The employer responds that even if this grievance involves discipline, such matters are not arbitrable for State Troopers. State v. State Troopers Ass'n, 134 N.J. 393 (1993); State of New Jersey (Div. of State Police), P.E.R.C. No. 2002-78, 28 NJPER 265 (¶33102 2002).

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 cannot consider the contractual merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations is broader for police officers and firefighters than for other public employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these tests for determining the negotiability of a subject affecting police officers:

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]


Arbitration of grievances is permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

We restrain arbitration to the extent, if any, the union seeks to challenge the effective date of Hand's promotion. The employer's interest in knowing the results of internal investigations before permanently promoting employees outweighs the employees' interest in being promoted. Arbitration would substantially limit governments policymaking powers. State of New Jersey (Div. of State Police), P.E.R.C. No. 2002-78; State of New Jersey (Div. of State Police), P.E.R.C. No. 2000-61, 26 NJPER 98 (¶31040 2000), recon. den. P.E.R.C. No. 2000-80, 26 NJPER 206 (¶31083 2000). We also restrain arbitration over the assertion that the retroactive date of Hand's promotion constituted a new disciplinary procedure and inequitable treatment under the contract. Under State v. State Troopers Ass'n, 134 N.J. 393 (1993), disciplinary disputes and review procedures concerning State troopers are neither negotiable nor legally arbitrable.

ORDER

The request of the State of New Jersey (Division of State Police) for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Katz, Mastriani, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Buchanan opposed.

DATED: September 26, 2002  
Trenton, New Jersey  
ISSUED: September 27, 2002