

P.E.R.C. NO. 86-136

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF SOMERSET,

Petitioner,

-and-

F.O.P. LODGE NO. 39,

Docket No. SN-86-39

Respondent,

-and-

P.B.A. LOCAL NO. 177,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission declines a request by the County of Somerset to restrain binding arbitration of a grievance which the F.O.P. Lodge No. 39 filed against it. The grievance alleged the County improperly failed to pay a probationary employee at the collectively negotiated starting salary for newly appointed sheriff's officers. The Commission holds that initial salary placement pertains to compensation and therefore is mandatorily negotiable.

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Appearances:

For the Petitioner, Lanigan, O'Connell & Chasin, Esqs.
(Charles M. Egan, III, On the Brief)

For the Respondent, Klausner & Hunter, Esqs. (Stephen E.
Klausner, Of Counsel)

For the Intervenor, Bosco-McDonnell Associates (Simon M.
Bosco, Consultant, On the Brief)

DECISION AND ORDER

On December 13, 1985, the County of Somerset ("County") filed a Petition for Scope of Negotiations Determination. The County seeks a restraint of arbitration of a grievance filed by three employees represented by the Fraternal Order of Police, Lodge No. 39 ("FOP"). The grievance alleges that the County improperly failed to pay a probationary employee at the collectively negotiated starting salary for newly appointed sheriff's officers.

The parties have filed briefs, documents and reply briefs. PBA Local No. 177 ("PBA") filed a brief as an intervenor. The following facts appear.

In October 1985, the FOP was designated the majority representative of employees of the County's sheriff's department. The County and the PBA had previously entered into a collective negotiations agreement effective from January 1, 1984 through December 31, 1985. The agreement's grievance procedure ends in binding arbitration.

On August 15, 1985, the County sheriff's department hired a new employee who had been a civilian dispatcher for approximately ten years.

On October 3, 1985, three employees filed a grievance which alleged that the newly hired employee was not being paid at the negotiated salary for a newly appointed sheriff's officer. The grievance asked that the three officers be compensated in some manner and that the new employee be paid the negotiated rate.

On October 15, 1985, the sheriff denied the grievance claiming the matter was not grievable under the contract and that the salary determination was made considering past experience and service with the County.

On October 21, 1985, the three grievants demanded binding arbitration. This petition ensued.

The County asserts that the individual grievants lack standing to arbitrate this matter, that the FOP did not represent sheriff's officers at the time of the grievance and that there is no injury to the union or the grievants. In addition, it claims it has a managerial prerogative to start the new employee at a salary above the minimum salary.

The FOP asserts the Commission does not have jurisdiction to decide the County's arguments based on standing. It asserts that the FOP was elected majority representative and therefore can properly process the case under Bayonne Board of Education, P.E.R.C. No. 78-60, 4 NJPER 160 (¶4077 1978). Also, the FOP argues that initial salary placement is negotiable under North Brunswick Board of Education, P.E.R.C. No. 86-29, 11 NJPER 583 (¶16203 1985). Finally, it contends that a recent Appellate Division decision is dispositive. Belleville Education Association v. Belleville Bd. of Ed., ___ N.J. Super. ___ (App. Div. 1986).

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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 merits of the grievance or any of the County's substantive or procedural defenses.^{1/} Instead we consider only the abstract issue of whether the County could legally agree to negotiate initial salary placement.

Local 195, IFPTE v. State, 88 N.J. 393 (1982) articulates the test for determining negotiability.

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. Id. at 404-05.

Our Supreme Court has clearly stated that compensation is a term and condition of employment within the meaning of the Act. Bd. of Ed. of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). Applying that analysis, the Commission has long held that initial salary placement is a mandatorily negotiable subject. See Fairview Bd. of Ed., P.E.R.C. No. 84-59, 10 NJPER 10 (¶15006 1983); Oakland Bd. of Ed., P.E.R.C. No. 82-125, 8 NJPER 378 (¶13173 1982); Deptford Bd.

^{1/} Specifically, we do not consider whether the individuals or the FOP can properly bring the disputed grievance or whether lack of harm is a proper defense.

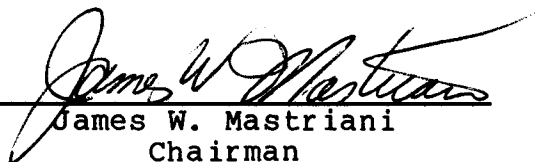
of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980); Eastern Camden Bd. of Ed., P.E.R.C. No. 80-158, 6 NJPER 348 (¶11174 1980); Dennis Tp. Bd. of Ed., P.E.R.C. No. 80-157, 6 NJPER 334 (¶11167 1980); New Jersey College of Medicine and Dentistry, P.E.R.C. No. 80-127, 6 NJPER 213 (¶11104 1980). The Appellate Division recently affirmed that position. Belleville, slip opinion at 3.

Thus, the County's argument that it has a managerial prerogative to unilaterally set a new employee's salary is without merit.

ORDER

The County's request for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Horan was not present.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986