

I.R. NO. 96-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BELMAR,

Petitioner,

-and-

Docket No. SN-95-112

PBA LOCAL 50,

Respondent.

Appearances:

For the Petitioner,
Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Charging Party,
Joseph N. Dempsey, attorney

INTERLOCUTORY DECISION

The Borough of Belmar filed a Scope of Negotiations Petition seeking to restrain an arbitration scheduled for July 17, 1995 and on June 28, 1995 filed an Order to Show Cause seeking an interim restraint of the arbitration. It claims the arbitration concerns staffing, a non-negotiable managerial prerogative. Specifically, the arbitration contests the denial of a shift swap by Joseph Byrne, patrolman and President of PBA Local 50.

Article 12 of the contract provides:

During the period from Memorial Day to Labor Day in any calendar year, an employee may exchange days or hours of duty tours with any other qualified employee of the Police Department. Written requests for approval of such exchanges must be made to the Chief of Police, who shall use reasonable discretion in granting or denying the request in accordance with the needs of the Department.

Officer Byrne sought to have another officer fill in for him on a particular shift. The Borough's Chief of Police denied the shift change stating the shift should not have two junior officers on the same shift; the Chief wanted an experienced officer on duty.

Local 50 contests the request for a restraint, arguing that the proffered reason given by the Chief was pretextual and it submitted evidence demonstrating at other times the Borough permitted two junior officers on the same shift.

The boundaries of the Commission's scope of negotiation jurisdiction are 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.
78 N.J. at 154.

Thus, the Commission does not consider the merits of the PBA's grievance. The exchange of duty or shifts is a mandatory subject of negotiations provided there is no interference with an employer's right to assign staff as needed. Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981); Township of Edison, P.E.R.C. No. 86-124, 12 NJPER 379 (¶17149 1986).

Here, the contractual provision does not impermissibly

interfere with the Borough's managerial prerogatives.

To the extent that the denial of the shift exchange was made for the reasons proffered by the Borough, that is, the need for a more experienced office on the shift, the decision was a managerial prerogative. However if, as argued by Local 50, the Borough's stated reasons are pretextual and the denial was made for reasons other than those expressed by the Borough, the Borough's actions did not constitute a managerial prerogative.

Accordingly, it is hereby ORDERED, the arbitrator is initially limited to an inquiry as to the veracity of the expressed reasons for denial of the shift exchange. If it is found that the denial of the shift exchange was made substantially for the reasons expressed by the Borough, the inquiry must end; the arbitrator has no authority to question the wisdom of an action which is based on a managerial prerogative. If, however, the arbitrator finds that the reasons expressed were substantially untrue and/or pretextual, the arbitrator may then proceed to a full inquiry into the merits of the grievance.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: July 11, 1995
Trenton, New Jersey