

I.R. NO. 90-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RUTHERFORD,

Petitioner,

-and-

Docket No. SN-90-71

PBA LOCAL 300,

Respondent.

SYNOPSIS

The Commission Designee temporarily restrains arbitration where the Borough transferred a lieutenant to a split shift even though the contract limits such shifts. However, prior to this reassignment, there was one shift where no lieutenant was on duty and by making this assignment this shift is now covered by a lieutenant. The Borough argued that the shift assignment was to insure "better protection and supervision for the citizens of the Borough of Rutherford". Assignments for proper employee supervision are nonnegotiable.

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Appearances:

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

For the Respondent  
Loccke and Correia, attorneys  
(Leon Savetsky, of counsel)

INTERLOCUTORY DECISION

On May 8, 1990, the Borough of Rutherford ("Borough") filed a Scope of Negotiations Petition ("Petition") seeking to restrain an arbitration brought by PBA Local 300 ("PBA"). The petition was accompanied by an Order to Show Cause, seeking to temporarily restrain the arbitration scheduled for June 5, 1990. The order was executed and made returnable for May 25, 1990. With the consent of the parties, a telephonic hearing was conducted. At the conclusion of the hearing, I restrained the arbitration pending a final Commission decision.

It is undisputed that on February 21, 1990, the Rutherford

police department transferred Lt. W. Vanderstarre to a so-called split shift; that is, a schedule where on some days one would work the day shift (7 a.m. - 3 p.m.) and on the other days one would work the night shift (11 p.m. - 7 a.m.).

The contract, at Article XII provides:

- (3) all Employees covered by this Agreement shall work steady non-rotating shifts....
- (A.) No Employee covered by this Agreement shall be required to rotate.
- (B.) Each employee shall work a steady designated shift which shall either be day shift (7 a.m. - 3 p.m.), afternoon (3 p.m. - 11 p.m.) shift or night shift (11 p.m. - 7 a.m.)...

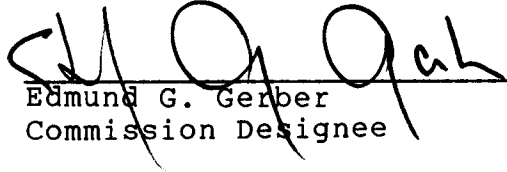
The PBA filed for arbitration claiming Vanderstarre's shift assignment violated these contract provisions.

The Borough submitted an affidavit of William Kraus, Chief of Police. The Chief stated that he assigned Vanderstarre to the split shift so that all shifts would have at least one Lieutenant on duty.

Prior to this assignment, there was one shift where no Lieutenants were on duty. This action was taken to ensure "better protection and supervision for the citizens of the Borough of Rutherford" and Vanderstarre is now on duty for that shift.

In Township of Kearny, P.E.R.C. No. 83-42, 8 NJPER 602 (¶13283 1982), the Commission held that an employer has a non-negotiable right to change shift assignments if necessary to enable superior officers to enforce discipline and train rank-and-file officers. Accordingly, there is a substantial likelihood that the Commission will find the Borough's order

reassigning Lt. Vanderstarre not arbitrable and accordingly, the arbitration was restrained pending a final Commission decision.

  
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Edmund G. Gerber  
Commission Designee

Dated: June 14, 1990  
Trenton, New Jersey