P.E.R.C. NO. 2011-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HAMMONTON,

Petitioner,

-and- Docket No. SN-2010-076

MAINLAND PBA LOCAL 77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Town of Hammonton for a restraint of binding arbitration of a grievance filed by Mainland PBA Local 77. The grievance challenges a directive of the Chief of Police that an officer may no longer be assigned to work special detail assignments at the Town's schools based upon an incident that attracted media attention. The Commission holds that the grievance is contesting the Chief's assessment of the officer's qualifications for the school assignments and is therefore not legally arbitrable.

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.

P.E.R.C. NO. 2011-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HAMMONTON,

Petitioner,

-and- Docket No. SN-2010-076

MAINLAND PBA LOCAL 77,

Respondent.

Appearances:

For the Petitioner, Gruccio, Pepper, DeSanto & Ruth, P.A., attorneys (Stephen D. Barse, of counsel)

For the Respondent, Plotkin Associates, LLC (Myron Plotkin, consultant)

DECISION

On March 24, 2010, the Town of Hammonton petitioned for a scope of negotiations determination. The Town seeks a restraint of binding arbitration of a grievance filed by Mainland PBA Local 77. The grievance challenges a directive that a police officer no longer be allowed to work special detail assignments at the Town's public schools. We restrain binding arbitration.

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

The PBA represents the Town's police officers and police sergeants. The parties entered into a collective negotiations agreement effective from January 1, 2006 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article XIII, Section I governs special details such as concerts, construction sites and retail establishments. For special details, including athletic events, officers are paid $45 per hour. Full-time regularly appointed police officers have the right of first refusal for special assignments.

Since at least 2002, the Town and the Hammonton School District have been parties to a "Safe Schools Resource Officer Memorandum of Understanding." Under that agreement, two police officers are assigned to the District to serve as School Resource Officers (SROs). There are also special details such as athletic events that any officer can work for extra pay.

On January 28, 2009, the Police Chief was informed that the administration of the St. Joseph School System did not want to have the grievant enter their schools due to a recent Rolling Stone magazine article. The article alleged that the grievant had verbal contact with a student who was allegedly involved with a teacher during the 2004-2005 school year. The grievant denies that allegation. As a result of the incident, there was extensive media coverage, including the Rolling Stone article. The Chief ordered that the grievant not partake in any functions at those schools.

On September 29, 2009, the Hammonton School District's Superintendent wrote to the Chief indicating that he preferred that the grievant not be assigned as the SRO. The Superintendent

stated that there had been a serious incident at the High School a few years earlier, people do not want to hear about these types of incidents again, and several people in the district would prefer that the grievant not be assigned as the high school SRO. The letter continued:

> This is not a reflection on his character. It is just that he was the SRO during the investigations and no one wants to be reminded of this difficult time in our district's history.

The next day, the Superintendent approached the grievant and asked him about his connection with the incident. The grievant responded that he had no role in the incident, was not the school's SRO when the matter became public, and said that, while a magazine article about the incident had his name right, everything the article reported about him was completely false. The grievant states that the Superintendent told him that because litigation from the incident was still pending, some Board members had misgivings about having him work as the SRO. The Superintendent called the situation "bad timing."

On October 1, 2009, the Chief asked the grievant whether he was aware of the Superintendent's request. The grievant recounted his conversation with the Superintendent and asked the Chief if he had done anything wrong to provoke the request. The Chief responded that the Superintendent had said that the grievant had done nothing wrong but that the grievant's presence

was a reminder of the incident. The Chief then assigned the grievant to regular patrol duties. The next day, the grievant worked a special detail at a football game.

On October 19, 2009, the Chief told the grievant that he would not be allowed to work any special details at any schools. By letter dated October 30, the Superintendent wrote to the Chief retracting his September 29 letter. The Superintendent explained that the grievant was the SRO during the time period when certain conduct was alleged to have occurred regarding a teaching staff member and a student. A lawsuit was filed against the Board, Board employees and Town employees. The suit was ultimately dismissed, however the teaching staff member, who pled guilty to certain charges, was suing the Board to recover attorney's fees. The new letter states that, because of the pending lawsuit, the Superintendent anticipates that the parties seeking reimbursement may take the opportunity to impugn anyone who worked at the High School at the time, or were named in the civil suit. He continued that after discussion with the Board, it was determined that it may not be appropriate for the grievant to be in an environment everyday where he can have such allegations made about him or about the District and that it would be better for all not to have the grievant as an SRO. The Superintendent ended by stating that he did not have the same concerns with the

grievant working specific details for extracurricular activities in the District.

On November 10, 2009, the PBA's labor consultant wrote to the Chief concerning his directive that the grievant not work any special details at the public schools. The letter acknowledges that the Chief had the right to determine who would be assigned as an SRO. Referring to the Superintendent's declaration that he did not have any concerns about the grievant's working special details at the public schools, the consultant wrote:

> [T]he denial of these [special] assignments constitutes a disciplinary action without just cause as [the grievant] is being financially penalized without just cause.

The letter relates that the PBA is requesting that the grievant be allowed to work special details at the public schools.

By letter dated November 24, 2009, the Chief responded:

> As far as extra details, it is my opinion that if a school is not happy with an officer during regular school hours; then I believe they would not be happy with that officer doing any type of extra detail. To me this is just common sense. Therefore I have given the order that [the grievant] will not be assigned to any Hammonton Public School functions.
>
> * * *
>
> I can assure you that there are many outside details besides school activities that may be

> utilized to help defray [the grievant's] financial obligations.[1/]

The PBA filed a grievance alleging that the Chief's refusal to allow the grievant to work special details at the public schools violated several sections of the agreement. The grievance requests this remedy:

> [T]hat [the grievant] is immediately allowed to work special details at the Hammonton Public Schools and he be compensated for any details he was denied and was able and willing to work.

On December 29, 2009, the Chief denied the grievance, repeating the reasons listed in his November 24 letter to the PBA's labor consultant. On January 8, 2010, the PBA demanded arbitration. This petition ensued.

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

---

1/ The Chief's certification states that the Superintendent said he was not concerned with the grievant's attending after school activities, but that he would leave that decision up to the Chief. Similarly, the Chief said that the Town Solicitor also let him decide that same issue.

> are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

> 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.

As this dispute involves a grievance, arbitration 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).[2/]

The Town argues that the requests from the school administrators to limit the grievant's presence at their schools justified the Chief's conclusion that the grievant did not possess the qualifications to work any assignments at the schools. The Town asserts that if the public knew of the letters from the school administrators, it would question the Chief's judgment if he allowed the grievant to work at after hours school events.

The PBA responds that this dispute involves the allocation of overtime among personnel who are qualified to perform the required work and is a mandatorily negotiable and arbitrable subject. It asserts that no claim has been made that the grievant could not perform special details at the public schools and points to the Superintendent's statement that he did not have concerns about the grievant's working special details at the schools. The PBA contends that the ban imposed by the Chief is

---

2/ The PBA is not seeking to challenge either the decision not to assign the officer as an SRO in the public schools or to the St. Joseph's School System. Thus, we need not address the Town's contentions on these points.

based on an unfounded and arbitrary conclusion and is a disciplinary sanction that reduces the grievant's income.

Disputes over overtime allocation among qualified employees are mandatorily negotiable and legally arbitrable. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). In this case, however, the Chief has determined that the grievant is not qualified to perform duties at the Town's schools. This judgment was not based on any finding of misconduct. It was not a disciplinary determination. It was based on the Chief's overall judgment that the department would be better served by not opening itself up to criticism for assigning the grievant to duties at the public schools.

Even if the assignment decision were disciplinary, as alleged by the PBA, it could not be challenged through binding arbitration. Only minor disciplinary determinations involving police officers are legally arbitrable and the statutory definition of minor discipline does not include reassignments. N.J.S.A. 34:13A-5.3; Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998). We note that the grievant is still being assigned to other special details and the allocation of those details to minimize his loss of overtime compensation involves a mandatorily negotiable subject.

ORDER

The request of the Town of Hammonton for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Fuller and Watkins voted in favor of this decision. Commissioners Krengel and Voos voted against this decision. Commissioner Colligan recused himself. Commissioner Eaton abstained.

ISSUED: December 16, 2010

Trenton, New Jersey