

P.E.R.C. NO. 2011-91

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY PROSECUTOR'S OFFICE,

Petitioner,

-and-

Docket No. SN-2011-015

PBA LOCAL 250,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request for reconsideration of P.E.R.C. No. 2011-74. In that decision, the Commission held that a proposal to layoff strictly by seniority submitted by the PBA during successor contract negotiations was not mandatorily negotiable as written when other factors such as special skills may be relevant. The PBA argues that the Commission erroneously assumed that special qualifications exist among PBA members and that investigators and detectives are interchangeable. The Commission rejects the PBA's argument that detectives and investigators are interchangeable for purposes of seniority and layoff because by law they hold distinct titles which may not be changed through negotiations.

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, Bauch, Zucker, Hatfield, LLC,  
attorneys (Kathryn V. Hatfield, of counsel)

For the Respondent, Mets, Schiro & McGovern, LLP,  
attorneys (James M. Mets, of counsel)

DECISION

On April 28, 2011, we issued a decision holding that a proposal submitted by PBA Local 250 during its successor contract negotiations with the Union County Prosecutor's office was not mandatorily negotiable as written and therefore could not be submitted to interest arbitration. P.E.R.C. No. 2011-74,      NJPER      (¶      2011). That proposal provided, in pertinent part:

Detectives and investigators shall be laid off in inverse departmental seniority order. Laid off Detectives and Investigators shall be placed on a special re-employment list and recalled in departmental seniority order. They shall have first right of refusal to be recalled to any opening in the position of Detective and Investigator. . . .

We reasoned that by law, detectives and investigators occupy distinct job titles, regardless of how they have been used and that requiring layoffs to be based on strict departmental seniority would significantly interfere with the Prosecutor's prerogative to consider other relevant factors "such as a special skill set or unsatisfactory performance" in choosing the detectives and investigators to lay off.

The PBA has moved for reconsideration. It asserts that our decision erroneously assumed that special qualifications exist among PBA members. According to the PBA, the undisputed facts in the record demonstrated that despite the different job titles in the recognition clause, all detectives are appointed as investigators and all detectives and investigators are interchangeable. In the alternative, the PBA asks that we order an evidentiary hearing to determine whether any special qualifications preclude a proposal that layoffs among unit members be made by inverse departmental seniority.

The Prosecutor opposes reconsideration, arguing that the PBA has not demonstrated extraordinary circumstances warranting reconsideration, N.J.A.C. 19:13-3.11. It asserts more specifically that the PBA should not be allowed to submit proofs in a motion for reconsideration that could have been submitted earlier and that our decision was based squarely on law and precedent rather than on any factual issue specific to this case.

We deny the PBA's motion for reconsideration.

Preliminarily, we reject the Prosecutor's contention that the PBA is improperly seeking to submit new evidence in support of its motion for reconsideration. That motion is based not on any new evidence, but on an argument that our decision did not properly consider the facts submitted by the PBA in support of its negotiability claim and instead improperly assumed non-record facts in upholding the Prosecutor's prerogative claim.

By law, detectives and investigators hold distinct job titles, regardless of whether all unit members have been appointed to the same title or used interchangeably as in this case. That legal distinction cannot be negotiated away. Essex Cty. Prosecutor's Office, P.E.R.C. No. 2004-19, 29 NJPER 473 (¶148 2003). Unlike the contractual clause at issue in Passaic Cty. Prosecutor's Office, P.E.R.C. No. 2009-34, 34 NJPER 444 (¶139 2008), which called for layoffs by seniority in job classification and permitted unsatisfactory performance to be considered, the PBA's proposed clause, as worded, calls for layoffs by strict departmental seniority. Thus, while the clause in Passaic Cty. preserved the legal distinction between detectives and investigators, the proposed clause in this case would require the Prosecutor to treat detectives and investigators as interchangeable for purposes of layoffs regardless of their distinct job titles and regardless of whether

the Prosecutor decides to appoint employees to different titles or use employees in these different titles in different ways at different points during the life of the contract. Including the proposed departmental seniority clause in a successor contract would effectively and illegally negotiate away the distinction in job titles between detectives and investigators.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Colligan and Eskilson recused themselves. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey