

P.E.R.C. NO. 2016-23

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF'S OFFICE,

Petitioner,

-and-

Docket No. SN-2015-036

POLICE BENEVOLENT ASSOCIATION  
LOCAL 177,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Somerset County Sheriff's Office's request for a restraint of binding arbitration of a grievance filed by the Police Benevolent Association Local 177. The grievance contests the County's refusal to fill a vacant Records Classification Supervisor [Sergeant] position with the most senior qualified officer. The Commission holds that the County's transfer/reassignment of the selected sergeant was a non-negotiable exercise of the County's managerial prerogative to match the best qualified employee with a particular job.

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, Ruderman & Glickman, P.C.,  
attorneys (Mark S. Ruderman, of counsel)

For the Respondent, Sciarra & Catrambone, attorneys  
(Christopher A. Gray, of counsel)

DECISION

On November 25, 2014, the Somerset County Sheriff's Office (County) filed a scope of negotiations petition. The County seeks a restraint of binding arbitration of a grievance filed by the Police Benevolent Association Local 177 (PBA). The grievance asserts that the County violated the parties' collective negotiations agreement (CNA) and past practice by refusing to fill the vacant Records Classification Supervisor [Sergeant] position with the most senior qualified officer.

The parties have filed briefs and the County filed exhibits. The PBA has also filed the certification of Donald Essig,

Sergeant, Somerset County Correctional Facility.<sup>1/</sup> These facts appear.

The PBA represents all uniformed employees of the Department of Corrections from the rank of Correction Officer to Chief of Correction Officer. The Board and Association are parties to a CNA with a term of January 10, 2010 through December 31, 2014. The grievance procedure ends in binding arbitration.

Article XIII, entitled "VACANCIES IN POSITION," states in pertinent part:

A. Whenever there is a vacancy in one of the positions covered by this Agreement, a notice of the vacancy will be posted by the County, and the position will be filled according to principles of seniority, provided the employee is qualified and willing to perform the work.

The County sent a memorandum to the PBA President on June 6, 2014 informing him that the Records Classification Supervisor [Sergeant] position had been posted in accordance with Jail Directive 14:39. On June 9, 2014, the County sent a five (5) page Interoffice Memo to all Corrections Sergeants entitled "Notice of Position Opening: Records Classification Supervisor [Sergeant]" which set forth the primary responsibilities and

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<sup>1/</sup> The Commission requires that all briefs recite all pertinent facts supported by certification(s) based upon personal knowledge. See N.J.A.C. 19:13-3.6(f)(1). The County did not file a certification.

qualifications for the position. The Notice stated in pertinent part:

In the near future interviews will be conducted to fill the above position. Any Correction Sergeant who is interested in applying for the position must meet each of the qualifications, as set forth below. The Sergeant selected to fill this position will be the one who is deemed to be the most qualified and best suited to fill the position, based on the results of an interview to confirm qualifications, determine job knowledge relative to position, and observation of past job performance.

The PBA initially filed a grievance on June 17 asserting that the posting of the notice was a violation of the parties' CNA. The PBA stated in its brief, "There was previously an action filed at PERC regarding the initial posting for the position for the records/classification Sergeant." We note that the Commission has no record of any action filed and no documentation has been provided by the parties.

This grievance was denied by the County. Thereafter, the PBA filed a second grievance<sup>2/</sup> on October 27, 2014, asserting

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2/ The PBA has footnote (1) in its brief that states the following:

"The PBA grieved the first job posting, the second job posting and the actual selection of Sergeant . . . over Sergeant Essig. By consent of the parties all three issues have been held in a grievance process pending the determination of the scope of negotiations petition. All three grievances deal with specifically the language from Article XIII of the contract."

(continued...)

that the County violated Article XIII of the CNA when it chose another sergeant with less seniority than Sergeant Essig to fill the Records Classification Supervisor [Sergeant] position.

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." We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters. The Court stated:

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

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2/ (...continued)

We note that neither party has briefed the relevant negotiability tests regarding the "posting" issue. As a result, we will only consider the issues regarding seniority and qualifications for the assignment. See N.J.A.C. 19:13-3.6(f).

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 governments 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.

[87 N.J. at 92-93; citations omitted]

Arbitration is permitted if the subject of the grievance 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).

The County argues that it had a non-negotiable managerial prerogative to select the most qualified officer to be assigned to the Records Classification Supervisor [Sergeant] position.

The PBA argues, and the record reflects in the October 27, 2014 grievance, that both Sergeant Essig and the sergeant selected by the County for the assignment had been "splitting time" in the Records Classification Supervisor [Sergeant] position for over one year. The certification from Sergeant Essig states that he has more seniority than the sergeant selected, is more qualified for the position and that he and the selected sergeant were both given a one hour oral interview for

the position, "[B]ut the interview did not include one question from our Standard Operating Procedure book."<sup>3/</sup>

Public employers have a non-negotiable prerogative to transfer or assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 570 (1998); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; Hudson Cty., P.E.R.C. No. 2009-72, 35 NJPER 221 (¶78 2009); Passaic Cty., P.E.R.C. No. 2003-96, 29 NJPER 297 (¶91 2003); So. Brunswick Tp. and PBA Local 166, P.E.R.C. No. 95-45, 21 NJPER 67 (¶26048 1995), aff'd sub nom. Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997); Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991); City of Long Branch, P.E.R.C. No. 92-53, 17 NJPER 506 (¶22248 1991); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990).

The New Jersey Supreme Court in Jersey City, supra, a police/law enforcement case subject to the Paterson standards set forth above, cited Local 195, supra, and stated:

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3/ The certification of Sergeant Essig also asserts that he believes that the sergeant selected was given the position because his father is friends with the County Sheriff and his uncle is a former Warden of the jail. He also asserts that the past practice between the parties was to use seniority to make assignment decisions. We do not consider these issues in a scope of negotiations petition since our jurisdiction is limited to whether the subject matter in dispute is within the scope of collective negotiations.  
Ridgefield Park.

Finally, in determining whether the transfer and reassignment provisions would significantly interfere with the determination of governmental policy, the Court stated that the *substantive* decision 'to transfer or reassign an employee is preeminently a policy determination. The power of the employer to make the policy decision would be significantly hampered by having to proceed through negotiation.' Id. at 417, (citing Ridgefield Park Educ. Ass'n v. Ridgefield Park Bd. of Educ., 78 N.J. 144, 156, (1978)). However, negotiations about the *procedures* for implementing transfers and reassignment 'will not significantly interfere with the underlying substantive policy determination.' Ibid.

[Jersey City at 570; emphasis added]

The Court further stated, "[W]e hold that the Local 195 negotiability test controls and that the transfer of officers to operational positions is not a subject of negotiation." Id. at 575.

The PBA cites several Commission decisions in furtherance of its argument. However the decisions cited all concern the issue of seniority with respect to shift assignments and not transfers/reassignments.<sup>4/</sup>

We find that the transfer/reassignment of the selected sergeant was a substantive decision by the County, as the

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<sup>4/</sup> The PBA cited: Bedminster Tp., P.E.R.C. No. 2013-94, 40 NJPER 72 (¶28 2013); Mercer Cty., P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998); and Philipsburg Tp., P.E.R.C. No. 89-30, 14 NJPER 640 (¶19268 1988).

employer, and was not a subject of negotiation; the transfer/reassignment decision was a governmental policy determination and was neither mandatorily nor permissibly negotiable.

ORDER

The request of the Somerset County Sheriff's Office for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall were not present.

ISSUED: October 29, 2015

Trenton, New Jersey