

P.E.R.C. NO. 2002-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Petitioner,

-and-

Docket No. SN-2001-23

PARAMUS P.B.A. LOCAL 186,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Borough of Paramus for a restraint of binding arbitration of a grievance filed by Paramus P.B.A. Local 186. The grievance contests the denial of a request for an exchange of tours. The Commission restrains arbitration to the extent the grievance seeks to enforce a tour exchange policy that would result in a detective from Adult or BCI serving for a full tour in Juvenile without a detective regularly assigned to that section. The Commission declines to restrain arbitration to the extent the grievance protests the shift exchange policy relating to tours exchanges between detectives in BCI and Adult Bureaus.

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
(Joel G. Scharff, on the brief)

For the Respondent, Loccke & Correia, attorneys
(Leon B. Savetsky, on the brief)

DECISION

On November 13, 2000, the Borough of Paramus petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Paramus P.B.A. Local 186. The grievance contests the denial of a request for an exchange of tours.

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

The PBA represents all police officers excluding the chief. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1997 through December 31, 1999. The parties' grievance procedure ends in binding arbitration.

Operation of Detective Division

The detective division of the Paramus police department has three bureaus -- Criminal Investigation, Juvenile, and Detective or Adult Bureau. Each bureau has its own offices. According to the Borough, the detectives' work is generally restricted to their assigned bureaus, except on occasions where another bureau is shortstaffed and a detective from another section helps out or a complaint must be taken and a bureau is not covered. In the latter case, any detective in an "on-call" status or serving as "late man" may be assigned. With respect to the Juvenile Bureau, each detective carries a caseload, but there is a substantial interchange of information and problem/case sharing among the detectives. All Juvenile Bureau detectives regularly interact with the same school officials and administrators.

The PBA agrees that when a Juvenile, BCI, or Adult matter arises during a tour, a detective assigned to that bureau handles it if such a detective is available. However, it disagrees that detectives from other bureaus help out only occasionally. It maintains that detectives routinely handle work in other bureaus. For example, it states that if there is no detective available in BCI, because either no one is scheduled or BCI detectives are busy, all of the detectives are trained to fingerprint, photograph, enter defendants into the BCI computer, and perform other BCI functions.

With respect to the Adult Bureau, it contends that on Saturdays, there are normally only three detectives -- one from each bureau -- working from 5:00 p.m. to 10:00 p.m. This night is historically the busiest of the week and all the detectives routinely work out of the Adult Bureau, just as if they were assigned to that unit. The PBA contends that almost every day detectives in Juvenile and BCI are asked to help out in the Adult Bureau because the bureau is understaffed or busy.

Finally, the PBA maintains that all of the detectives are trained to handle Juvenile matters; that there has never been a problem with Adult or BCI detectives doing so in the absence of the regularly assigned detective; and that all detectives are on-call 120 hours per year, during which time they handle whatever situation arises, regardless of their normal bureau assignment.

In support of its contention that detectives frequently perform work outside their assigned bureaus, the PBA cites the period from July 17 to November 5, 2000. During these 96 days, the Juvenile Bureau was uncovered for 43 shifts. Of those 43 shifts, any juvenile incident that occurred had to be covered by detectives from the Adult or BCI bureaus. Also during this time, the BCI was uncovered on 46 shifts and detectives from the Juvenile or Adult Bureaus had to cover those shifts.

Tour Exchanges

Detectives may exchange tours when approved by one of the detective supervisors, to whom the chief has delegated that

authority. A standard form is used within the three bureaus for submitting a tour exchange or leave day request. A condition of an exchange is that the detective perform the assignment of the substituted position.

There are no written directives with respect to standards for reviewing requests for exchange of tours. According to the Borough, exchanges have been liberally permitted among line police officers, but have been more strictly scrutinized for detectives. The Borough states that prior to the mid to late 1990s, tour exchanges were only occasionally granted between detective bureaus. However, it relaxed that policy due to reduced staffing levels in the detective division. To preserve the opportunity for tour exchanges, detectives were permitted to exchange tours with detectives in other bureaus.

The PBA counters that, up until the circumstances triggering these grievances, tour exchanges between detectives in different bureaus had been regularly approved.

In early 2000, the chief directed supervisors to allow tour exchanges only when the detective's assigned bureau would still be covered by at least one detective who is regularly assigned to that section. Under the more liberal exchange policy, the chief had observed that detectives exchanging tours across sections did not always switch their assignments or their physical duty station. He certifies his belief that that circumstance impaired the functioning of the Juvenile Bureau.

Brock and McEllen

Three detectives are regularly assigned to the Juvenile Bureau. Detective Brock works a regular day tour (9:00 a.m. to 5:00 p.m.). He rotates every other week with the other two detectives who work the 4:00 p.m. to 12:00 midnight tour. Every 16 weeks, each detective works the late shift, 10:00 p.m. to 6:00 a.m. On all of his day and night shifts, he is the only Juvenile Bureau detective on duty.

On April 7, 2000, Detective McEllen requested permission to exchange his regular 9-5 tour for the week of April 11-15, 2000 with Detective Brock. McEllen is regularly assigned to the Detective Bureau. The exchange was denied because Detective Brock's regular 9-5 tour in the Juvenile Bureau would not be covered by a detective regularly assigned to that bureau.

On April 14, 2000, the PBA filed a "general" (as opposed to "personal") grievance alleging that the Borough had violated established past practice by denying the tour exchange. It requested that the past practice be reinstated and that McEllen and Brock be made whole. On April 18, Captain Benedict Compagnone responded to the grievance. He stated that the switch was denied because, pursuant to the chief's directive, it would have resulted in no regular Juvenile Bureau detective working on Brock's assigned tour. On August 11, the PBA demanded arbitration over "exchange of tours." This petition ensued.

Analysis

Our jurisdiction is 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. 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 are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

Thus we do not consider the contractual merits of the grievance or any contractual defenses the employer may have. Specifically, we do not address the Borough's arguments that this grievance is not arbitrable under the parties' agreement because there is no provision for exchange of tours or a past practice provision.

The scope of negotiations for police and fire employees 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 Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 88 (1981), with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson, at 92-93, outlines the scope of negotiations analysis for police 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.

Because the dispute involves a grievance, arbitration will be permitted if the dispute is at least 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 Borough asserts that this grievance involves an assignment decision and the chief's right to deny a tour exchange request based on his judgment that the exchange would cause operational problems. Its concern appears to be the experience and qualifications of detectives covering the Juvenile Bureau.

The Borough argues that while all detectives share the same rank, detectives from the BCI and Adult Bureaus do not have the same qualifications as regularly-assigned Juvenile Bureau detectives. In that vein, it maintains that while other detectives may have been trained to do Juvenile Bureau work and

may be able to temporarily fill-in; Juvenile Bureau detectives have a better knowledge of Bureau procedures, established relationships with school officials, and awareness of ongoing juvenile issues. Further, it asserts that officers regularly assigned to the Juvenile Bureau may perform their own caseload work while working a shift exchange, while detectives from other bureaus may end up simply answering phones rather than functioning as full replacements. The Borough asserts that, for these reasons, it has the prerogative to determine that the Juvenile Bureau will be staffed by at least one regularly assigned Juvenile detective whenever the Bureau is open and fully operational.

The PBA counters that voluntary shift exchanges are mandatorily negotiable provided they require prior management approval. It argues that a denial of such an exchange request is legally arbitrable.

This case implicates the distinction between shifts and assignments -- a distinction alluded to in some of our cases concerning voluntary shift exchanges and discussed more fully in decisions involving seniority bidding proposals for shifts or assignments. See, e.g., City of Jersey City, P.E.R.C. No. 98-96, 24 NJPER 116 (¶29058 1998) (shift exchange); Burlington Cty., P.E.R.C. No. 2000-70, 26 NJPER 121 (¶31052 2000); Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), clarified and recon. den., P.E.R.C. No. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd 27 NJPER 357 (¶32128 2001) (shift bidding).

Proposals permitting voluntary shift exchanges conditioned on the employer's prior approval are mandatorily negotiable. See, e.g., Town of Kearny, P.E.R.C. No. 2001-58, 27 NJPER 189 (¶32063 2001); Borough of North Plainfield, P.E.R.C. No. 97-77, 23 NJPER 38 (¶28026 1996); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990); contrast Hanover Tp., P.E.R.C. No. 93-5, 18 NJPER 398 (¶23179 1992); Rochelle Park Tp., P.E.R.C. No. 88-40, 13 NJPER 818 (¶18315 1987), aff'd NJPER Supp.2d 198 (¶176 App. Div. 1988); Teaneck Tp., P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310 1984) (contract language requiring only notice to management before tour swaps between officers of equal rank or qualifications is permissively but not mandatorily negotiable).

An employer has a right to supervise tour or shift swaps to ensure that qualified personnel are assigned. Jersey City; see also Local 195; Ridgefield Park (public employers have a non-negotiable prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs). Often a voluntary shift exchange clause involves officers of equal rank who have the same assignment but simply work different hours. See Borough of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988).

Grievances protesting the denial of an exchange request are legally arbitrable unless the employer shows that enforcement would substantially limit governmental policy by, for example,

causing operational problems or preventing an employer from having qualified individuals perform an assignment. Compare City of Passaic, P.E.R.C. No. 2001-27, 27 NJPER 14 (¶32007 2000) (grievance challenging policy limiting annual number of exchanges and carryover of exchanges was legally arbitrable; employer showed no governmental policy need for newly-imposed restrictions); Hanover (denial of temporary shift exchange request could be arbitrated where employer had not argued that such an exchange would substantially limit governmental policy and had viewed dispute as denial of a permanent exchange) and Jersey City (police chief had managerial prerogative to issue policy preventing special task force members from exchanging tours on the midnight shift; task force members and other officers were not fungible and the former could not perform their usual functions or achieve their special mission on the midnight shift).

Within this framework, we conclude that the denial of the Brock and McEllen shift exchange implicates the Borough's managerial prerogative to ensure that qualified individuals fill assignments in the Juvenile Bureau. The requested exchanges would have resulted in changes of assignment, not just changes in work hours, and would have run counter to the chief's judgment that the Juvenile Bureau should be staffed with one regularly assigned Juvenile Bureau detective when the unit is scheduled to be open. That judgment was based on the chief's assessment that regularly assigned Juvenile Bureau detectives are best qualified to be the

sole detective assigned to the section because of their relationship with school officials; their awareness of ongoing juvenile issues; and their knowledge of their colleagues' caseload. Further, the chief had also concluded, based on his experience with a more liberal exchange policy, that the functioning of the Juvenile Bureau had been impaired when staffed only by officers from other units, who often did not function as a full replacement.

The PBA stresses, and the Borough agrees, that detectives from other units do Juvenile Bureau work by assisting when the unit is shortstaffed or busy or handling juvenile matters when the unit is closed. However, in the former case a regularly assigned Juvenile Bureau detective is presumably scheduled and in the latter case, the Borough has decided that the unit does not have to be fully operational.

For these reasons, we conclude it would substantially limit governmental policy to enforce a tour exchange policy that would result in a detective from Adult or BCI serving for a full tour in Juvenile without a detective regularly assigned to that section. We will therefore restrain arbitration over that aspect of the grievance.

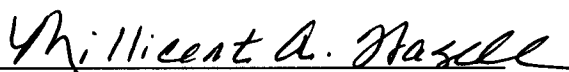
To the extent, if any, the grievance protests the shift exchange policy as it relates to tour exchanges between detectives in the BCI and Adult bureaus, we decline to restrain arbitration.

The PBA asserts that detectives in BCI have frequently performed work in the Adult Bureau and vice versa and the Borough acknowledges that tour exchanges between the bureaus were permitted in the mid to late 1990s. The Borough has not alleged that operations in either bureau were impaired by such exchanges or shown that any special qualification or experience is required for the assignments beyond those possessed by all detectives. Compare Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998).

ORDER

The request of the Borough of Paramus for a restraint of binding arbitration is granted to the extent the grievance seeks to enforce a tour exchange policy that would result in a detective from Adult or BCI serving for a full tour in Juvenile without a detective regularly assigned to that section. The request is otherwise denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: October 25, 2001
Trenton, New Jersey
ISSUED: October 26, 2001