

P.E.R.C. NO. 89-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-89-26

BUTLER BLUE COLLAR
WORKMAN'S ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association against the Borough of Butler. The grievance challenges the transfer of seven dispatchers from the supervision of the department of public works to the supervision of the police department. The Commission finds that the employer has a prerogative to determine who will supervise whom and to transfer supervisory responsibility.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, P.A.
(Mark E. Tabakman, of counsel)

For the Respondent, Earl William Dean, President,
Butler Blue Collar Workman's Association

DECISION AND ORDER

On November 17, 1988, the Borough of Butler ("Borough") filed a Petition for Scope of Negotiations Determination. The Borough seeks to restrain binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association ("Association"). The grievance challenges the transfer of seven dispatchers from the supervision of the department of public works ("DPW") to the supervision of the police department.

The parties have filed briefs and exhibits. They have also filed responses to our written inquiries. These facts appear.

The Association represents blue collar employees in the DPW and several other departments. The Borough and the Association entered a collective negotiations agreement effective January 1,

1987 through December 31, 1988. The grievance procedure ends in binding arbitration.

Dispatchers^{1/} are blue collar employees who perform services for the DPW and other departments, including the police department. They receive phone and radio calls and forward them to the proper department. They do not have computers, video display equipment or word processing equipment. Police secretaries type reports and maintain files. A 1980 survey showed that 168,554 phone and radio calls were received that year: 35.5% were police calls.

The National Crime Information Center ("NCIC") restricts access to information on criminal histories and prior arrests to employees supervised by a police chief. The State of New Jersey and its Division of Motor Vehicles have similar restrictions. According to the Borough Administrator, the dispatchers often receive and transmit such confidential information.^{2/} The Borough does not have an NCIC terminal in its police department, but the Administrator asserts that dispatchers have received NCIC information from personnel in the County Sheriff's Department using

1/ The Borough considers radio dispatchers and communications operators to be interchangeable. The Association does not, but agreed to a combined title so long as the duties and benefits of the radio dispatcher position remained the same. The Borough Administrator did not give that assurance. The Department of Personnel has separate listings for the two positions. We will refer to the employees in this case as "dispatchers."

2/ The job description for communications operators lists receiving and answering "telephone, radio and video display inquiries of the [NCIC] and the State Crime Information Center.

the County's police computer. According to the Association, dispatchers do not receive such information. Instead the police officers obtain this information through other towns using the computer.

On August 6 and October 9, 1987, the Morris County Sheriff warned the Borough's police chief that the Sheriff was prohibited from dispensing confidential information to non-police supervised dispatchers and that continued use of such dispatchers would result in his terminating the police department's access to the County's computer services. On December 18, the Sheriff informed the police chief that his communications center would no longer supply the Borough's dispatchers with computer information. Instead police officers would have to call the communications center and identify themselves by name, rank and social security number. That same day, the Borough Administrator issued an emergency directive transferring the dispatchers' supervision from DPW to the police chief.

On December 29, 1987, the Borough Council passed this resolution:

WHEREAS, the radio dispatchers/communications operators are presently supervised by the Director of Public Works; and

WHEREAS, the Office of Sheriff of the County of Morris has informed the Borough of Butler that its computer access to Division of Motor Vehicle records, National Crime Information Center information and State Criminal History records are in jeopardy of being terminated because of the Borough of Butler's radio dispatchers/communications operators not being under the supervisory authority of the Chief of Police;

NOW, THEREFORE BE IT RESOLVED that the supervisory authority of the radio dispatchers/communications operators shall be transferred from the Director of Public Works to the Chief of Police effective December 29, 1987;

BE IT FURTHER RESOLVED, that although this transfer of supervisory authority is being made, the fundamental jobs and responsibilities of the radio dispatchers/communications operators are not changing, and since they will remain responsible for dispatching for the electric utility, it is hereby directed that the Director of Public Works shall have input into their supervision by the Chief of Police in order to protect the requirements of the electric utility.

The transfer did not change the dispatchers' compensation, benefits, seniority, or unit placement.

On January 4, 1988, the Association filed a grievance. It alleged that the transfers violated the collective negotiations agreement, specifically articles on recognition, scope of coverage, collective negotiations procedures, and retained Civil Service rights. It also alleged that the transfers violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., Civil Service statutes and regulations, and other statutes and ordinances. The Borough denied the grievance, the Association demanded binding arbitration, and this petition ensued.

The Borough asserts that the transfers were necessary to insure that dispatchers would continue to receive confidential information about criminal histories and that it has a managerial prerogative to make such non-disciplinary transfers. The Association recognizes the prerogative to transfer employees, but asserts that these transfers were based on false information from

the Sheriff and the police department. It asserts that the transfers are the third in a series of attempted takeovers by the police chief and that dispatchers do not have access to criminal histories or confidential files.

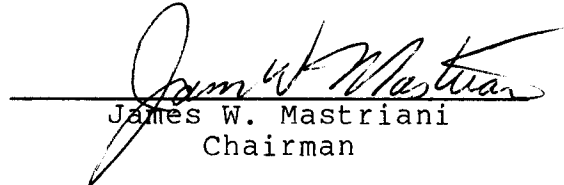
The employer has a prerogative to determine who will supervise whom and to transfer supervisory responsibility. Brookdale Comm. Coll., P.E.R.C. No. 84-16, 9 NJPER 560 (¶14234 1983). Cf. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978) (transfers are not mandatorily negotiable). Given this caselaw and the circumstances of this case, these transfers of supervisory responsibility are not arbitrable. The Sheriff cut off the Borough's access to confidential computer information and the Borough acted to restore that access. The employees' compensation, benefits, duties and unit placement have apparently remained unchanged and the employees have not been disciplined. The County and the Borough may or may not have been mistaken about the dispatchers' access to confidential information, but such a mistake, even if proven, would not alter the managerial nature of the Borough's decision.^{3/}

^{3/} The Association has requested an evidentiary hearing. We deny that request because the evidence proffered would not change our result.

ORDER

The Borough's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey
February 10, 1989
ISSUED: February 14, 1989