

P.E.R.C. NO. 92-60

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
TOWNSHIP OF WAYNE,

Petitioner,

-and-

Docket No. SN-92-22

WAYNE PBA LOCAL NO. 136,

Respondent.

SYNOPSIS

The Public Employment Commission restrains binding arbitration of grievances filed by Wayne PBA Local No. 136 against the Township of Wayne concerning compensation and uniforms of two detectives transferred to the patrol division to the extent the PBA seeks to contest the transfers from the detective bureau. The PBA may legally arbitrate its claims that detectives transferred to the patrol division are entitled to have the employer supply the necessary uniforms at its expense, and to retain a 4% increment in "recognition of being a more qualified, trained and experienced police officer."

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Appearances:

For the Petitioner, Gerald L. Dorf, attorney  
(John C. Scannell, on the brief)

For the Respondent, Loccke & Correia, attorneys  
(Michael J. Rappa, on the brief)

DECISION AND ORDER

On August 16, 1991, the Township of Wayne petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances filed by Wayne PBA Local No. 136. The grievances concern the compensation and uniforms of two detectives transferred to the patrol division.

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

The Township is not a civil service community. The PBA represents its police officers, with certain exceptions. Article 15 of the parties' collective negotiations agreement is entitled Hours and Overtime. It provides, in part:

All Bureaus with a call-out or standby schedule except Traffic Bureau shall be annually compensated in the sum of an additional four (4%) per cent differential based on each said Employee's base wage for such time....

In the event of recall to duty of uniform personnel, they shall be entitled to time and one-half (1 1/2).

The grievance procedure ends in binding arbitration.

The ordinance governing the Detective Bureau provides that the "bureau shall consist of such members of the Department as may from time to time be assigned thereto by the Chief with the approval of the Business Administrator." The ordinances do not refer to detective as a rank.<sup>1/</sup>

Johnny Liebchen is a sergeant and was a detective for 18 years. In March 1990, he was transferred from the Detective Bureau to the Uniformed Patrol Division. The record does not indicate why. When the PBA president asked the chief if Liebchen would keep the 4% differential, the chief responded that he would not. The chief stated:

As we all know, the 4% differential is compensation for the fact that officers on call-out or standby schedule are not entitled to overtime pay irrespective of the hours they may work.

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<sup>1/</sup> In 1983, the Honorable Peter Ciolino, A.J.S.C., granted summary judgment against former detectives who had sought to retain the 4% differential after being transferred back to the patrol division. The officers contended that they had been "reduced in rank" in violation of N.J.S.A. 40A:14-147, but the Court concluded, given the ordinance, that such a transfer was not a reduction in rank. Loertscher v. Pringle, Law Div. Dkt. No. 608582-82 (3/17/83).

Past practice has dictated that when an officer is reassigned by the Chief of Police to a non call-out or standby schedule assignment the 4% differential is terminated.

The PBA grieved the refusal to continue the differential. The Mayor denied the grievances and the PBA demanded binding arbitration.

John Cunniffe was a detective. He was also transferred to the patrol division. The record does not indicate why. On April 3, 1990, he asked the chief to supply him with the "necessary uniforms to perform any new assignment." The chief denied this request. He stated, in part:

According to Article XIII of the agreement...it states in part each officer shall be responsible for the purchase, fitting, repair and maintenance of his uniform or clothing. Since the language of the contract between both parties is quite clear, I must deny your request for the purchase of uniform items in order to perform your new assignment, since you have received a clothing allowance each year as per the stated agreement, and will receive the 1990 allowance shortly.

Recognizing that the purchase of new uniform items may place an immediate drain upon your financial assets, I again offer help in obtaining this year's \$600 allowance prior to the latter part of this month.

Cunniffe rejected this offer. The PBA demanded binding arbitration, identifying the grievance to be arbitrated as "clothing allowance."

The PBA framed the issue for arbitration as:

Whether the employer violated the agreement in changing the grievants' compensation and other benefits as a result of their change from the Detective to Patrol Division.

The Township characterized this as an attempt to contest the transfers as demotions. This petition ensued.

The employer contends that non-disciplinary reassignments from a detective bureau to a patrol division are not legally arbitrable; N.J.S.A. 40A:14-118 preempts negotiations and arbitration over such reassignments; Judge Ciolino's decision bars arbitration; and "the issue of promotion/demotion to/from the Detective Bureau" is not permissively negotiable. The PBA responds that the petition is barred by laches; compensation and other benefits are mandatorily negotiable; N.J.S.A. 40A:14-118 is not preemptive; and the employer has not demonstrated its need to act unilaterally.

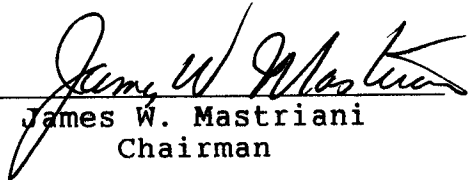
Management has a prerogative to transfer an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). This is usually so even if a transferred employee loses a shift differential or premium pay. City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985). We have therefore restrained arbitration over transfers, like this one, from the detective division to another division. Oakland; City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990). We will

accordingly restrain arbitration to the extent the PBA seeks to contest the transfers. We will not, however, restrain arbitration to the extent the PBA claims that detectives transferred to the patrol division are entitled to have the employer supply the necessary uniforms at its expense. Similarly, the PBA may legally arbitrate its claim that the grievants are contractually entitled to retain the 4% increment, irrespective of the transfer, in "recognition of being a more qualified, trained and experienced police officer." PBA brief at 9; see also Camden Bd. of Ed., P.E.R.C. No. 88-18, 13 NJPER 718 (¶18268 1987). If the PBA cannot prove the existence of an agreement to continue the stipend after a transfer from the detective bureau, it would follow that the salary reduction was a direct consequence of the managerial decision to transfer the grievants. Ibid.

ORDER

The request of Wayne Township for a restraint of binding arbitration is granted to the extent the PBA seeks to contest the transfers of officers Liebchen and Cunniffe from the Detective Bureau.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Regan, Smith and Wenzler voted in favor of this decision. Commissioner Grandrimo voted against this decision.

DATED: November 25, 1991  
Trenton, New Jersey  
ISSUED: November 26, 1991