

P.E.R.C. NO. 95-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH BRUNSWICK TOWNSHIP,

Petitioner,

-and-

Docket No. SN-95-4

PBA LOCAL 166,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by PBA Local 166 against the Township of South Brunswick. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reassigned a patrol officer to the position of station officer. The Commission finds that management has a prerogative to transfer or reassign a police officer from one duty position to another to meet its governmental policy goal of assigning the officer best qualified for a particular duty; State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), holds that the discipline amendment does not apply to any police officers; and any claim of anti-union animus in exercising a managerial prerogative must be raised in an unfair practice charge. The Commission declines to restrain binding arbitration to the extent the grievance claims that the employer did not comply with its alleged procedural obligation to post the position of station officer and permit volunteers to apply.

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Appearances:

For the Petitioner, Ruderman & Glickman, P.C., attorneys
(Mark S. Ruderman, of counsel; Leonard C. Schiro, on the
brief)

For the Respondent, Klausner Hunter & Seid, P.C., attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On July 15, 1994, the Township of South Brunswick petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by PBA Local 166. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reassigned a patrol officer to the position of station officer.

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

Local 166 represents the employer's patrol officers and detectives. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

Article XVI is entitled Assignments. Section C requires patrol assignments to be "based upon seniority except under exigent circumstances in the opinion of the Chief of Police." Article XX is entitled Scheduling. Paragraph 1 states that "[s]cheduling of duty shall be uniform and consistent. Changes therein shall not unduly inconvenience any Employee." Article XXXVII is entitled Management Rights. It recognizes the employer's right to transfer employees, provided it does so "reasonably, in accordance with this Agreement and for good cause."

Martin Conte has been a municipal police officer for 16 years and has been employed by the Township since 1987. Until February 14, 1994, he was assigned to the patrol division. He worked on the 11 p.m. to 7 a.m. shift or the 7 a.m. to 3 p.m. shift; he chose not to work on the 3 p.m. to 11 p.m. shift because he needed to pick up his son on Friday afternoons for weekend visitations. Conte received excellent evaluations.

Between June 1991 and June 1993, Conte served as Local 166's president. According to Conte, he had an antagonistic relationship with the police chief.

Sometime before February 1994, 12 police officers retired pursuant to an early retirement incentive program. The chief formed a committee to recommend redeployments.

On January 31, 1994, the chief informed Conte that as of February 14, he would be reassigned to the position of station officer (also called station commander) and would work the 3 p.m. to

11 p.m. shift. That position is outside the patrol division. Conte received a 3% salary increase.

Conte was told that his primary duties as a station officer would be "scheduling, quasi-duty requests, burglar alarms and building maintenance." According to the chief, Conte was reassigned to the position of station officer because he was the only officer in the patrol division who had the skills to do all the duties of that position without additional training.^{1/} The chief asserts

1/ These skills are:

- a. Self-reliance in order to provide security for police facility and municipal complex;
- b. Ability to deal with a variety of people;
 - (i) Other police officers, civilians needing information, and citizen walk-in complaints.
- c. Ability to handle, process and transport prisoners;
- d. Ability to work with court personnel and provide security during court sessions;
- e. Perform as a dispatcher;
- f. Ability to fingerprint;
- g. Confirm and serve warrants;
- h. Maintain all equipment in police facility;
- i. Coordinate viewing of video tapes;
- j. Maintain and enforce fire and burglar alarm program;

Footnote Continued on Next Page

that the position of station officer has become more important given a large theft from the Municipal Building last year. The chief denies that Conte's union activity motivated the reassignment.

Conte asserts that station officer is a "dead end" position to which officers have been assigned as a punishment or a prelude to retirement. He believes that he was given this assignment not because of any special skills he had (he says he lacks computer skills and dispatcher training), but because the police chief disliked his activity as Local 166's president. Conte asserts that the chief did not speak with his immediate supervisors about the reassignment and they did not approve it. Nor did the chief follow the previous practice of posting the position or soliciting volunteers. Conte also asserts that he has more seniority than officers not assigned as station officers and that his new position has disrupted his visitation rights and personal life. Local 166's current president has submitted an affidavit asserting that the reassignment was viewed by other police officers as a form of discipline, rather than as a promotion or lateral transfer.

1/ Footnote Continued From Previous Page

- k. Ability to operate a breathalyzer, coordinate equipment testing, and maintain results;
- l. Arrange for special departmental mailings; and
- m. Ability to perform the essential job functions of police officer.

Conte filed a grievance asserting that the reassignment violated the cited contractual articles. The employer denied the grievance and Local 166 demanded arbitration. This petition ensued.

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. 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.

Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these negotiability tests:

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

No statute or regulation is alleged to preempt negotiations.

Management has a prerogative to transfer or reassign a police officer from one duty position to another to meet its governmental policy goal of assigning the officer best qualified for a particular duty. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; 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).

Local 166 asserts that even if reassignments are not generally negotiable, this reassignment was disciplinary and is legally arbitrable. Relying on the discipline amendment to N.J.S.A. 34:13A-5.3, we have held that the disciplinary reassignment of a police officer is legally arbitrable. See, e.g., Ocean Tp., P.E.R.C. No. 93-13, 18 NJPER 442 (¶23198 1992); Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986). However, in State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), rev'g 260 N.J. Super. 270 (App. Div. 1992), our Supreme Court held that the discipline amendment does not apply to troopers or any other police

officers. Union Cty., P.E.R.C. No. 95-43, 21 NJPER ____ (1____ 1995). We thus cannot permit arbitration on the basis of the discipline amendment.

Local 166 asserts that the reassignment was invalid because it was motivated by anti-union discrimination. If an employer has a prerogative to make a personnel decision unilaterally, any claim of anti-union animus in exercising that prerogative must be raised in an unfair practice charge. Teaneck Tp. Bd. of Ed. v. Teaneck Ed. Ass'n, 94 N.J. 1 (1983). We thus cannot permit arbitration on the basis of alleged discrimination in this reassignment.

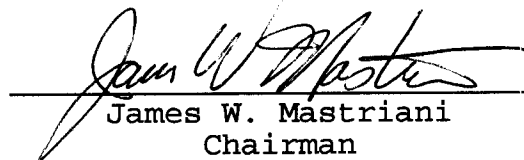
Local 166 asserts that the employer did not comply with its alleged procedural obligations to post the position of station officer and seek volunteers. These procedural claims are mandatorily negotiable and legally arbitrable except to the extent that Local 166 asserts the employer must assign a volunteer to that position even if the employer believes that someone else is better qualified. In other words, the employer may agree to post the position and consider all applicants before making an assignment, but it cannot restrict its discretion to appoint the person it believes best suited to that position even if that person did not volunteer.

ORDER

The request of the Township of South Brunswick for a restraint of binding arbitration is denied to the extent the

grievance claims that the employer did not comply with its alleged procedural obligation to post the position of station officer and permit volunteers to apply. The request is granted to the extent the grievance contests the merits of the reassignment of officer Martin Conte to station officer or asserts that the Township was confined to using volunteers for that position.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: January 24, 1995
Trenton, New Jersey
ISSUED: January 25, 1995