

P.E.R.C. NO. 98-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-97-127

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City of Jersey City's request for a restraint of binding arbitration of a grievance filed by the Jersey City Police Officers Benevolent Association. The grievance contests a policy precluding police officers assigned to the Neighborhood Task Force Unit from swapping their evening shifts with regular police officers on the midnight shift. The Commission finds that, as a rule, shift exchanges conditioned on an employer's prior approval are mandatorily negotiable. However, an employer can deny shift exchanges if an officers' special skills are required on a particular shift.

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, Jo Ann Katzban, Assistant Corporation
Counsel

For the Respondent, Fast & Tenenbaum, attorneys
(Jacqueline Jassner, of counsel)

DECISION

On June 13, 1997, the City of Jersey City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Jersey City Police Officers Benevolent Association. The grievance contests a policy precluding police officers assigned to the Neighborhood Task Force Unit from swapping their evening shifts with regular police officers on the midnight shift.

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

The POBA represents non-supervisory police officers employed by the City. Article 15 of the parties' collective

negotiations agreement is entitled "Exchange of Days Off". It provides:

- A. The Police Department may grant the request of any employee of this bargaining unit to exchange or "swap" a tour of duty with another bargaining unit member, provided both employees consent to said mutual swap.
- B. The Police Department may agree to an employee's swap of tours without obtaining a replacement, provided the tour that is swapped is repaid at the City's convenience.
- C. Such requests shall be granted on a uniform basis, with standard rules and regulations applying to all employees of the bargaining unit making such request.
- D. Such requests which are made in conformity with the rules and regulations established pursuant to Section C above shall not be unreasonably or arbitrarily denied.

The parties' negotiated grievance procedure ends in binding arbitration of contractual disputes.

In 1993, the City created a community-oriented policing program and received government grants to implement it. The program seeks to involve police officers in community life and thus to engender a feeling of responsibility among the officers and a feeling of trust among the residents so that officers and residents will work together to make a neighborhood safer. The primary method used to achieve these goals is to maintain "beat integrity" by assigning police officers to the same beat daily and having them patrol on foot or by bicycle or scooter. These daily walking or riding assignments make officers highly visible and known in the community.

The Neighborhood Task Force (NTF) is a unique structure within the police department. The NTF program is coordinated by lieutenants with no other duties and each NTF unit is supervised by an NTF sergeant responsible for the NTF officers assigned to that district. The NTF officers are trained in community policing techniques and strategies. It takes 18 to 24 months for an NTF officer to become effective.

NTF patrol officers work on the evening tour -- 4:00 p.m. to midnight. That tour was selected based on the high number of "quality of life" calls and service calls received during those hours; the hope is that by improving the quality of community life, more serious criminal activity can be avoided. District commanders are also authorized to provide extra NTF coverage by scheduling eight-hour tours between 2:00 p.m. and midnight.

On March 6, 1997, the police chief issued a standard operating procedure concerning the subject of "Tour Exchanges - NTF Program." Paragraphs 1-5 of this policy state:

1. Effective this date, tour exchanges for all personnel assigned to the NTF program will be governed by the following guidelines.
2. Exchanges may be granted, within the discretion of the District Commander, when operational needs permit and staffing levels are sufficient. Coverage by at least one officer on each NTF post must be maintained; tour exchanges which violate the foregoing may not be granted.
3. Exchanges may not be utilized solely for the purpose of creating an alternate regular work schedule.

4. Exchanges will be repaid, at the discretion of the District Commander, when operational needs benefit or staffing levels require.
5. Consistent with the community based aspects of the NTF program, tour exchanges will be repaid on the day or evening tours only. Assignments will be within the NTF program only and will be made to provide minimum or additional personnel coverage or to expand the hours of coverage on an NTF post.

According to the chief, he ruled out shift exchanges involving the midnight shift because "the NTF program requires long-term assignment of officers to their beat in order to become familiar to community residents and to secure community confidence" and "the success of the NTF program would be impaired if officers were allowed to exchange tours outside of the NTF program." NTF officers are allowed to exchange tours with day shift personnel, provided other NTF personnel maintain post coverage on the evening tour, because they can maintain their community contacts during day shift hours. However, the midnight tour offers little or no opportunity for interaction between officers and the community because businesses are closed and residents are asleep by then.

On March 7, 1996, the POBA filed a grievance. The grievance asserted that the police chief violated Article 15 by denying NTF officers tour exchanges involving midnight shifts while permitting all other members to exchange tours freely. The City denied the grievance and the POBA demanded arbitration. This petition issued.

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 outlines the steps of a scope of negotiations analysis for police officers 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. [87 N.J. at 92-93; citations omitted]

Because the dispute arises as 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). We consider that question in the abstract and express no opinion about the contractual merits of these grievances or any contractual defenses. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

As a rule, proposals permitting voluntary shift exchanges conditioned on the employer's prior approval are mandatorily negotiable. See 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); Borough of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988); Teaneck Tp., P.E.R.C. No. 85-51, 10 NJPER 644 (¶15309 1984); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981). Contrast Teaneck Tp., P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310 1984) (holding not mandatorily negotiable a proposal requiring only prior notice, rather than prior approval, of shift exchanges); Town of Kearny, P.E.R.C. No. 83-7, 8 NJPER 435 (¶13203 1982). An employer, however, can deny shift exchanges if an officer's special skills are required on a particular shift. See, e.g., Carteret. Compare Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982) (regular shift assignment based on officer's special qualifications non-negotiable).

We will assume that Article 15 is mandatorily negotiable in general. But we agree with the employer that Article 15 cannot

be applied to require that NTF police officers be granted the same right to midnight shift exchanges on the same uniform conditions as all other police officers. The duties and skills of NTF officers and other officers are not fungible and NTF officers cannot perform their usual functions or achieve their special mission on the midnight shift. The police chief must retain a prerogative to deny shift exchanges when necessary to maintain "beat integrity" and achieve the goals of the NTF program.

ORDER

The request of the City of Jersey City for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998
Trenton, New Jersey
ISSUED: January 30, 1998