

P.E.R.C. NO. 90-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX

Petitioner,

-and-

Docket No. SN-89-62

ESSEX COUNTY JAIL ANNEX
SUPERIOR OFFICERS ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Essex County Jail Annex Superior Officers Association against the County of Essex. The grievance alleges that the City violated the parties' collective negotiations agreement when it transferred two captains from the Jail Annex to the Jail. The Commission finds that subjecting these transfer decisions to a "just cause" standard of review would substantially limit the County's ability to carry out its policy objective of improving operations at the Jail.

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Appearances:

For the Petitioner, H. Curtis Meanor, Acting County Counsel
(Lucille LaCosta-Davino, Assistant County Counsel)

For the Respondent, Whipple, Ross & Hirsch, Esqs.
(Donald B. Ross, Jr., of counsel)

DECISION AND ORDER

On April 5, 1989, the County of Essex petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance which the Essex County Jail Annex Superior Officers Association ("SOA") has filed. The grievance alleges that the City violated the parties' collective negotiations agreement when it transferred two captains from the Jail Annex to the Jail.

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

The Essex County Jail, located in Newark, and the Jail Annex, located in Caldwell, make up the Division of Correctional Services in the Department of Public Safety. The SOA is the

majority representative of superior officers employed at the Jail Annex. The County and the SOA have entered into a collective negotiations agreement effective from January 1, 1988 through June 30, 1989. The grievance procedure ends in binding arbitration. Article 10B reads:

ARTICLE 10 SENIORITY

Seniority will be given preference in all areas as set forth below:

* * *

B. INVOLUNTARY TRANSFERS

An involuntary transfer from one shift to another or one job to another may be made for good cause by the Warden. When so transferred, the employee may any time thereafter bid on a job or state his preference on the voluntary transfer list as previously set forth.^{1/}

A certification filed by Joseph Santiago, the County's Director of Public Safety since December 1988, states as a result of a federal court consent decree, the County must improve conditions at the Jail and Jail Annex. Before October 1988, the Annex had several different persons acting as administrator for brief periods of time. Among them was Captain Thomas Thompson. In October 1988, a new administrator for the Jail Annex was appointed. Santiago decided to transfer Thompson to the Jail to use his administrative experience to improve operations there. Santiago also decided to

^{1/} Article 10.A.4 creates a voluntary transfer list which allows employees to list their job or shift preference. The list is renewed every year.

transfer Captain Robert Shields to the Jail. Shields had several years experience commanding the midnight shift at the Annex. The transfers were made effective January 1, 1989. However both officers went on sick leave at the time of the transfers; neither had returned to active duty as of August 25, 1989. Santiago stated that he therefore had no basis on which to assess whether the transfers had improved the Jail's operations.

Shortly after the transfer decisions were made, the SOA filed a grievance protesting the change of assignments. The County denied it. On February 16, 1989 the SOA demanded arbitration and this petition ensued.

The boundaries of the Commission's scope of negotiations jurisdiction are 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; emphasis added]

Accordingly, we only determine whether the County could have legally agreed to arbitrate the grievance. We do not determine whether the transfers violated the contract.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters:^{2/}

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 fire fighters, 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 fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy-making 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 this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83).

^{2/} 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 mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers.

The County contends that it has a managerial prerogative to transfer personnel to improve operations at the Jail. It analogizes its actions to those of the teacher transfers held not mandatorily negotiable in Ridgefield Park. The County further argues that Article 10B is non-negotiable because it does not preserve its right to ignore seniority when making an involuntary transfer in cases where an employee's special skills are required in another part of its operations. Thompson and Shields were transferred, the County states, precisely because of their experience and administrative skill and that determination should not be subject to arbitration.

The SOA does not accept the County's version of the facts, but has not contradicted any of the statements made in the Santiago affidavit. The SOA contends that factual issues are to be resolved by the arbitrator. Citing City of Perth Amboy, P.E.R.C. No. 87-84, 13 NJPER 84 (¶18037 1986), the SOA concedes that Article 10B is not mandatorily negotiable. It asserts, however, that the County's governmental powers are unfettered and the provision is permissively negotiable and may be arbitrated. It analogizes the "good cause" phrase in Article 10B with provisions allowing arbitrators to determine whether there is just cause for discipline.

Absent any allegation that the County intended to discipline the captains by transferring them, there is no discipline

issue here. Although in Perth Amboy we did not have to decide whether a "transfer for just cause" article was permissively negotiable, we said:

The just cause requirement could subject each transfer decision to review by an arbitrator, regardless of whether the City's motivation was disciplinary. We further agree with the City that Section A of the same article, which bars discharge or discipline except for just cause, adequately protects the PBA's right to negotiate disciplinary review procedures. A transfer made for reasons of governmental policy is not reviewable in arbitration, while a transfer imposed as a disciplinary measure is. Compare Hudson Cty., P.E.R.C. No. 86-147, 12 NJPER 531 (¶17199, 1986) with Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986). [13 NJPER at 85]

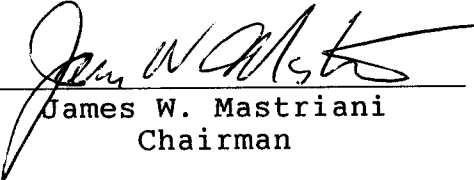
Given Ridgefield Park's directive, we conclude that subjecting these transfer decisions to a "just cause" standard of review would substantially limit the County's ability to carry out its policy objective of improving operations at the Jail. See also Local 195; City of East Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985)(restraining arbitration over transfer to improve departmental operations); Bor. of Oakland, P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985)(restraining arbitration over transfer from the detective bureau to the patrol division); Kearny PBA Local 21, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982)(restraining arbitration over reassignment of police sergeant as night commander of detective bureau); Warren Cty. Freeholders Bd., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985)(restraining arbitration over shift reassignment of attendant to resolve security problems, increase

efficiency and correct improper work habits);^{3/} City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987)(restraining arbitration over police officer's non-disciplinary reassignment from patrol duties to internal security duties).

ORDER

The County'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, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
January 31, 1990
ISSUED: February 1, 1990

^{3/} This case did not involve permissive negotiability.