

P.E.R.C. NO. 2000-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-99-59

P.B.A. LOCAL NO. 277,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Camden County Sheriff's motion for reconsideration of P.E.R.C. No. 2000-25. At the request of the PBA and the Sheriff, the Commission clarifies that portion of its decision on the shift assignment proposal to state that in order for the PBA shift assignment proposal to be mandatorily negotiable, the employer must have the right to assign any unit member, of appropriate rank, to the positions identified in the decision as requiring special skills, training or qualifications. The Commission denies the Sheriff's motion for reconsideration absent any particularized arguments as to why the employer believes the Commission's analysis to be in error.

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, Howard S. Wilson, Counsel to the
Office of the Sheriff, on the brief

For the Respondent, Klatsky & Klatsky, attorneys
(Fred M. Klatsky, on the brief)

DECISION

On January 28, 2000, the Appellate Division issued an Order of Limited Remand to the Commission to enable the Camden County Sheriff to file a motion for clarification and reconsideration of our decision in Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (130190 1999). In that decision, we considered whether three proposals that P.B.A. Local No. 277 sought to submit to interest arbitration were mandatorily negotiable. We found to be mandatorily negotiable a proposal that would require binding arbitration of minor discipline and a proposal that would make violations of Internal Affairs Guidelines subject to the contractual grievance procedure, except to the extent the proposal would require binding arbitration of major disciplinary actions. We also held that a proposal providing for

shift assignment bidding based on seniority and college credits was not mandatorily negotiable with respect to certain assignments identified by the Sheriff as requiring special skills, training or qualifications. That proposal was otherwise held to be mandatorily negotiable.

The Sheriff appealed the decision on November 9, 1999. On November 10, the PBA filed a motion with us requesting clarification of that portion of our decision pertaining to the shift assignment proposal. On November 18, the Sheriff filed a motion with us requesting clarification of the shift assignment portion of the decision as well as reconsideration of the entire decision. We did not act on the motions because the filing of the appeal gave control of the case to the appellate court. See R. 2:9-1.

On January 28, 2000, following a conference conducted pursuant to the Civil Appeals Settlement Program, the Appellate Division issued the Order of Limited Remand "for the limited purpose of enabling appellant to file and serve a motion for relief from said decision." The order noted that the PBA did not object to the limited remand and stated that the court retained jurisdiction.^{1/}

^{1/} While the order required that we complete remand proceedings by March 28, we were granted a two-day extension so we could consider the Sheriff's motion at our March 30 meeting.

On February 3 and 10, respectively, the Sheriff and PBA refiled their motions with us. While the remand order directed us to consider the appellant Sheriff's motion for relief, we believe the order contemplated that we would consider the PBA's submissions in this proceeding. We therefore consider both parties' requests for clarification of our ruling on the shift assignment proposal, as well as the Sheriff's motion for reconsideration. We turn first to the motions for clarification.

Both the Sheriff and the PBA request guidance as to how, under P.E.R.C. No. 2000-25, the PBA's proposed bidding system would be implemented given our ruling that the proposal was not mandatorily negotiable with respect to certain positions in the unit. We start by reviewing the proposal, the Sheriff's position, and our ruling.

The PBA represents approximately 162 unit members who work in a variety of units within the uniform, administrative/civil and investigative divisions. The PBA proposed that most unit members would bid for "shift assignments" based on seniority and college credits. Shifts generally determine work hours, but since the proposal defined "shift" to include "general assignment within a shift," the proposed bidding system would affect the employees' assignments as well. The PBA excluded from its proposal 16 assignments in certain specialized units and an unspecified number of part-time positions on the Dive Team and Sheriff's Emergency Response Team (SERT).

The employer agreed that the positions identified by the PBA required special qualifications and should be excluded from any bidding proposal. But it argued that many other positions also required special training and qualifications. It submitted a certification by the Sheriff describing the special training or qualifications required for 66 positions (in addition to those exempted by the PBA proposal).

The Sheriff also stated that there were 50 positions in the Hall of Justice and 30 in the Transportation Units, but did not assert that any special training or qualifications were required for these positions. However, he maintained that the proposal would undermine his ability to provide cross-training and an appropriate mix of experienced personnel in the Hall of Justice and Transportation units. He also questioned how, with the bidding system, he could maintain a pool of qualified personnel to fill the 80 Transportation and Hall of Justice positions.

P.E.R.C. No. 2000-25 observed that, because the PBA proposal would affect both work hours and assignments, the proposal implicated two principles articulated in our case law. The first principle is that public employers and majority representatives may agree that seniority can be a factor in shift selection where all qualifications are equal and managerial prerogatives are not otherwise compromised. See, e.g., City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (125197 1994); Asbury Park; contrast Borough of Highland Park, P.E.R.C. No. 95-22, 20

NJPER 390 (¶25196 1994) (clauses that base shift selection solely on seniority are not mandatorily negotiable). The second principle is that public employers have a non-negotiable prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. *See, e.g., Local 195, IFPTE v. State*, 88 N.J. 393 (1982); Ridgefield Park. *Cf. New Jersey Transit Corp.*, P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996).

Within this factual and legal framework, P.E.R.C. 2000-25 concluded that, based on the Sheriff's certification, the employer had shown that it requires special training, skills or other qualifications for all but two of the positions specifically described in that certification. We therefore held that, except for those two positions in the Jury Management and Record units, the PBA's proposal would significantly interfere with the employer's prerogative to match the best qualified employees to particular assignments and, therefore, was not mandatorily negotiable. 25 NJPER at 435.

However, we found the proposal mandatorily negotiable to the extent it proposed a bid system based on seniority and education for the Record and Jury Management positions; the approximately 80 assignments in the Hall of Justice and Transportation Units; and among employee in units with more than one shift. *Id.* at 435-436. We concluded that the record did not demonstrate that the proposal would cause problems generally in

training or the mix of experienced personnel. Further, we recognized the employer's right to deviate from the bidding system when necessary for a specific training program, or to assign an employee with specialized skills, or to meet the safety needs of the public.

Against this backdrop, both parties ask us to clarify the statement that the proposal is mandatorily negotiable "among employees in units with more than one shift." Both also ask us to state whether all sheriff's officers are initially eligible to bid for any of the sheriff's officer assignments in the Hall of Justice, Transportation, Jury Management and Records units, regardless of their present assignment. The PBA further inquires whether, if the answer to that question is yes, the Sheriff can then assign the "remaining officers" -- those who do not secure positions in the noted departments -- to the assignments that we found required special training, qualifications or skills. The PBA makes the same two-fold inquiry with respect to the sergeants' right to bid for assignments in the Hall of Justice, Transportation, Jury Management and Records.

We consider the latter issue first.

The key principle in P.E.R.C. No. 2000-25 was that, for all but two of the sheriff's officer and sergeant assignments described in the Sheriff's certification as requiring special skills, qualifications or training, the employer had a managerial prerogative to assign the individuals (of appropriate rank) whom it deemed best suited for the positions and did not have to

negotiate over a bidding system based on seniority and education. That principle would be contravened if all officers bid on the Transportation, Hall of Justice, Records, and Jury Management assignments and, for the remaining assignments requiring special qualifications, the employer was limited to the pool of individuals who did not obtain positions under the bidding system. However, the shift assignment proposal could be implemented consistent with P.E.R.C. No. 2000-25 if the employer first assigned individuals to the positions described in the certification (or retained incumbents in them), so that the remaining unit members would bid for the positions in the Hall of Justice, Transportation, Jury Management and Records. That is the procedure that we surmised would be used, if the PBA's original proposal was adopted, with respect to the positions it originally exempted. However, that is not necessarily the only way that a bidding system proposal could be implemented consistent with P.E.R.C. 2000-25. For example, all unit members could bid preliminarily for positions in the Hall of Justice, Transportation, Records and Jury Management units, as long as the employer retained the right to assign any unit member, including members who preliminarily obtained one of the biddable assignments, to one of the positions requiring special skills, training or qualifications.

In that vein, the PBA also asks us to clarify whether all of the jobs in the Hall of Justice, Jury Management,

Transportation and Records are to be combined into one group so that sheriff's officers and sergeants who are not placed in non-biddable assignments can bid for any assignment, of appropriate rank, in any of the four units. P.E.R.C. 2000-25 in effect found that assignments in the noted units did not require special training, skills, or qualifications beyond those required for all unit members. Therefore, these positions could be combined into one group for bidding purposes consistent with the rationale of that decision. They could also, consistent with the decision, be treated separately for bidding purposes, depending on the parties' intent or the arbitrator's judgment should the arbitrator decide to award a shift assignment clause.

As noted, both parties also ask us to clarify the import of our statement that the PBA proposal was mandatorily negotiable "among employees in units with more than one shift." They agree that the Identification Bureau is the only unit with more than one shift that is not, under P.E.R.C. 2000-25, otherwise subject to the PBA proposal. The Sheriff maintains that since we recognized that special training and experience were necessary for assignment to the Identification Bureau, the quoted language means the bidding system would apply only to personnel already assigned to the Bureau, allowing them to bid among themselves for their desired shift. The PBA appears to agree with this interpretation. So do we. Under P.E.R.C. No. 2000-25, assignments to the Identification Bureau may not be subject to

bid, but employees assigned to the unit may bid among themselves for their preferred shift based on seniority and college credits.

Finally, we turn to the employer's request that we reconsider all issues presented in its original petition, including its contention that no aspect of the PBA's bidding proposal is mandatorily negotiable.

Motions for reconsideration will not be granted absent extraordinary circumstances. N.J.A.C. 19:13-3.11; N.J.A.C. 19:14-8.4. P.E.R.C. No. 2000-25 explained why, given Commission and judicial case law, the PBA proposals concerning minor discipline and violations of internal affairs guidelines were mandatorily negotiable, except to the extent that the latter proposal would require binding arbitration of major discipline arising out of violations of internal affairs guidelines. The decision also explained why, given the parties' submissions and our case law concerning shift bidding, the PBA shift assignment proposal was mandatorily negotiable with respect to positions in the Hall of Justice, Transportation, Jury Management and Records units. The employer does not state why it believes our analysis to be in error. Absent any particularized arguments, we deny the motion for reconsideration.

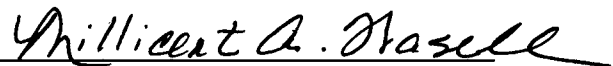
ORDER

P.E.R.C. No. 2000-25 is clarified to state that, in order for the PBA shift assignment proposal to be mandatorily negotiable, the employer must have the right to assign any unit

member, of appropriate rank, to the positions identified in P.E.R.C. No. 2000-25 as requiring special skills, training or qualifications. P.E.R.C. No. 2000-25 is also clarified to state that assignments to the Identification Bureau may not be subject to bid, but that sheriff's officers and sergeants assigned to that unit may bid among themselves for their desired shifts.

The Camden County Sheriff's motion to reconsider P.E.R.C. No. 2000-25 is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration.

DATED: March 30, 2000
Trenton, New Jersey
ISSUED: March 31, 2000