

P.E.R.C. NO. 95-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-95-11

JERSEY CITY POLICE OFFICERS'
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Jersey City Police Officers' Benevolent Association against the City of Jersey City to the extent it contests the decision to eliminate the operation of the scofflaw warrants unit during the day and reassign all officers in that unit to the evening tour. The Commission declines to restrain arbitration over any claim that police officer Dennis Persico had enough contractual seniority to bid on an investigator position on another squad during the day tour and to be replaced by a less senior, but equally qualified officer. The Commission restrains binding arbitration of a grievance contesting the reassignment of Persico from the investigative division to the patrol division to the extent the grievance contests the decision to reduce the number of investigators or asserts that Persico's reassignment was disciplinary. The Commission declines to restrain binding arbitration over a claim that the employer erred in its seniority calculations.

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, Sean M. Connelly, Corporation Counsel
(Paul W. Mackey, First Assistant Corporation Counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys (Jacqueline Jassner,
of counsel)

DECISION AND ORDER

On August 5, 1994, the City of Jersey City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of two grievances filed by the Jersey City Police Officers Benevolent Association. The grievances assert that the City violated the parties' collective negotiations agreement when it reassigned a police officer from a day tour to an evening tour and when it later reassigned the same officer from the investigative division to the patrol division.

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

The City is a Civil Service community. The Association represents the City's non-supervisory police officers, including

police officers assigned to the investigative division. The parties entered into a collective negotiations agreement providing that there would be bidding for steady shifts on a seniority basis, unless an assignment required special skills or involved light duty. The contract also provided that no police officer "shall be discharged, disciplined, reprimanded, reduced in rank, compensation, position or deprived of any employment advantage ... without just cause." The grievance procedure ends in binding arbitration.

Dennis Persico has worked as a police officer for the City since 1968. In September 1994, he was promoted to sergeant.

Before June 26, 1992, Persico was assigned as an investigator to the scofflaw warrants squad and worked on the day shift. On that date, the squad was moved from the Director's office to the Chief's office. Four days later, a new Director was appointed and shortly afterwards the scofflaw warrants squad was moved back to the patrol division and was made exclusively an evening squad. The purposes of having that squad work only on evenings were to increase the number of uniformed police on the street, improve the squad's efficiency by capturing more warrant violators, and increase flexibility in assigning officers to support patrol functions.

Having decided to have the scofflaw warrants unit work during evenings, the employer reassigned ten officers, including Persico, and a sergeant to the evening shift. According to the employer, Persico did not seek reassignment from the warrants squad

to detective duty in a precinct; he did not have enough contractual seniority to be reassigned from the evening tour on the scofflaw warrants squad to an investigator position on another squad during the day tour; and no officer with more seniority would voluntarily switch with him.

On September 3, 1992, the Association filed a grievance. It asserts that the City violated the contractual seniority provisions by reassigning Persico to the evening tour and disregarding his seniority bid for the day tour. Persico stressed that he needed evenings off to take care of his father, who is 81 years old and a stroke victim. The grievance was denied and the Association demanded arbitration.

In September 1992, the City reduced its force of investigators to put more police officers on the street. Employees were identified for this reduction in force according to their seniority.

On September 21, 1992, the scofflaw warrants squad was disbanded and its warrant functions were integrated into the work of each precinct. Officers on that squad, including Persico, were reassigned from the patrol division to the investigative division. Persico was assigned as an investigator.

On November 9, 1992, a federal district court ordered a patrol officer named Sampson reassigned to the position of investigator. To make room for this officer, Persico was reassigned from the position of investigator to the position of uniformed

patrol officer. According to the City, Persico was selected for reassignment because he had the least seniority among investigators, not counting those investigators who had received the valor award. According to the Association, Persico's reassignment was a punishment, one of many unwarranted incidents of discipline, and investigators with less seniority were allowed to remain in their positions.

The Association filed a second grievance contesting Persico's reassignment to the patrol division. This grievance was also denied and the Association demanded arbitration. This petition ensued.^{1/}

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 do not consider the contractual merits of this grievance or any contractual defenses the City may have.

^{1/} Persico has since been reassigned to the position of investigator in the investigative division. That reassignment followed another officer's demotion from the position of investigator.

The first grievance contests Persico's reassignment from the day tour to the evening tour. The City asserts that it had a prerogative to determine that the scofflaw warrants squad would operate only during the evenings. We agree. That prerogative necessarily entails a right to have squad members work during the evening tour. See, e.g., Hudson Cty., P.E.R.C. No. 86-147, 12 NJPER 531 (¶17199 1986); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). We thus restrain arbitration of the grievance contesting the elimination of the day tour in the scofflaw warrants unit. We do not restrain arbitration over any claim that Persico had enough contractual seniority to bid on a investigator position on another squad during the day tour and to be replaced by a less senior, but equally qualified officer.

The second grievance contests Persico's reassignment from the investigative division to the patrol division. The City asserts that it had a prerogative to reduce the number of investigators and to transfer or reassign officers to the patrol division as a result. We agree. The next question is which officers would be transferred or reassigned. The employer has a prerogative to select employees for transfer or reassignment to meet the governmental policy goal of assigning the officers best qualified for particular duties. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. However, when seniority is used as the sole basis for reassigning an employee, a claim that the employer erred in its seniority calculations is legally arbitrable. State of New Jersey

(Dept. of Human Services), P.E.R.C. No. 94-108, 20 NJPER 234 (¶25116 1994), app. pending App. Div. Dkt. No. A-5987-93T5; City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988). The employer based Persico's reassignment solely on its calculation of his relative seniority and Persico alleges that other employees had less seniority. That claim is legally arbitrable.

The Association also argues that the reassignment was disciplinary and legally arbitrable under the discipline amendment under N.J.S.A. 34:13A-5.3. However, the Supreme Court has precluded binding arbitration of minor disciplinary determinations involving police officers unless and until the Legislature specifically authorizes that right. See Hudson Cty., P.E.R.C. No. 95-69, 21 NJPER 153 (¶26092 1995), app. pending App. Div. Dkt. No. ___.

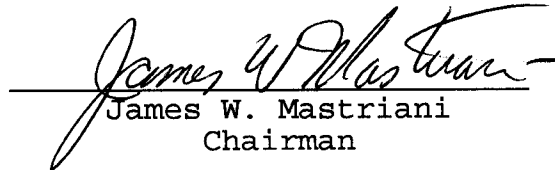
ORDER

The request of the City of Jersey City for a restraint of binding arbitration of the September 3, 1992 grievance is granted to the extent it contests the decision to eliminate the operation of the scofflaw warrants unit during the day and reassign all officers in that unit to the evening tour. This request is otherwise denied.

The City's request for a restraint of the grievance contesting the reassignment of Dennis Persico from the investigative division to the patrol division is granted to the extent the

grievance contests the decision to reduce the number of investigators or asserts that Persico's reassignment was disciplinary. This request is otherwise denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: May 23, 1995
Trenton, New Jersey
ISSUED: May 24, 1995