

P.E.R.C. NO. 96-82

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STAFFORD TOWNSHIP,

Petitioner,

-and-

Docket No. SN-96-10

STAFFORD TOWNSHIP PBA LOCAL 297,

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Stafford Township PBA Local 297 against Stafford Township. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reassigned a detective to a patrol position. The Commission finds that regardless of whether or not the reassignment was disciplinary, arbitration over the merits must be restrained. 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), held that the discipline amendment to N.J.S.A. 34:13A-5.3 does not apply to troopers or any other police officers.

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, Apruzzese, McDermott, Mastro & Murphy, attorneys (James L. Plosia, of counsel)

For the Respondent, Klatsky & Klatsky (David J. DeFillippo, of counsel)

DECISIONS AND ORDER

On July 28, 1995, Stafford Township petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Stafford Township PBA Local 297. The grievance asserts that the employer violated the parties' collective negotiations agreement when it reassigned a detective to a patrol position.

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

The Township is not civil service municipality. Local 297 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 XXVII.C of the agreement provides: "No patrolman shall be removed, suspended or reduced in rank from or in office of employment herein except in accordance with N.J.S.A. 40A:14-147."

Richard Knowles has been a Township police officer since 1977. From 1983 until June 1995 Knowles was assigned to the detective division. During that time he was specially assigned twice to a County narcotics strike force. His most recent assignment to the strike force began in October 1994. His service with the strike force was interrupted in April 1995 when he was forced to take a medical leave following surgery to correct an off-duty injury. After he was certified to return to duty, he was advised that his strike force assignment would be discontinued and that he would be reassigned from the Township's detective bureau to a patrol position.

On June 23, 1995, the PBA filed a grievance challenging Knowles' reassignment and asserting that the new assignment imposed a hardship. The grievance sought Knowles' reassignment to the detective bureau. The chief and the mayor denied the grievance and the Association demanded arbitration. The demand alleges that "the removal of Officer Knowles from the Detective Bureau was not made to advance the efficient utilization of manpower, but rather, to discipline Officer Knowles without affording him the protections set forth under N.J.S.A. 40A:14-147.<sup>1/</sup> This petition ensued.

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<sup>1/</sup> N.J.S.A. 40A:14-147 provides that no officer shall:

be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just

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:

1/ Footnote Continued From Previous Page

cause ... and then only upon a written complaint setting forth the charge or charges.... Said complaint shall be ... served upon the member or officer so charged, with notice of a designated hearing ... which shall be not less than 10 nor more than 30 days from date of service of the complaint.

\* \* \*

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

N.J.S.A. 40A:14-150 provides for Superior Court review for any police officer "tried and convicted upon any charge or charges."

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.

The employer argues that it has a prerogative to reassign officers to meet its operational needs. It further argues that even if the reassignment were disciplinary, arbitration must be restrained under State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993). The PBA asserts that even if management has the prerogative to transfer or reassign an employee to match the best qualified employee with a particular job assignment, this reassignment was disciplinary and is legally arbitrable because the officer has no alternate statutory appeal procedure for challenging

it. Regardless of whether or not the reassignment was disciplinary, we must restrain arbitraiton over the merits of the reassignment.

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). This is usually so even if a transferred employee loses a shift differential or premium pay. City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985). Thus, if the reassignment was not disciplinary, arbitration over the merits of the reassignment must be restrained.


In State Troopers, our Supreme Court held that the discipline amendment to N.J.S.A. 34:13A-5.3 does not apply to troopers or any other police officers. Union Cty. and PBA, Union Cty. Correction Officers, Local No. 199, Inc., P.E.R.C. No. 95-43, 21 NJPER 64 (¶26046 1995), app. pending App. Div. Dkt. No. A-3416-94T1. Thus, if the reassignment was disciplinary,

arbitration over the merits of the reassignment must be restrained.<sup>2/</sup>

ORDER

The request of Stafford Township for a restraint of binding arbitration over the merits of the reassignment of Richard Knowles from the detective bureau to a patrol position is granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: June 20, 1996  
Trenton, New Jersey  
ISSUED: June 21, 1996

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<sup>2/</sup> The employer has not sought a restraint over any procedural claims that may arise from the reference to N.J.S.A. 40A:14-147 in the demand for arbitration. See Borough of Hopatcong, P.E.R.C. No. 95-73, 21 NJPER 157 (¶26096 1995), recon. den. P.E.R.C. No. 96-1, 21 NJPER 269 (¶26173 1995), app. pending App. Div. Dkt. No. A-371-95T5. Accordingly, we need not address any such claims.