

P.E.R.C. NO. 94-92

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ROCKAWAY,

Petitioner,

-and-

Docket No. SN-94-33

ROCKAWAY TOWNSHIP POLICEMEN'S  
BENEVOLENT ASSOCIATION LOCAL  
NO. 287,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Rockaway Township Policemen's Benevolent Association Local No. 287 against the Township of Rockaway. The grievance asserts that the Township violated the parties' collective negotiations agreement when it reassigned a police officer from the detective bureau to the patrol division. Management has a prerogative to transfer or reassign an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Any claim that the employee suffered a disciplinary demotion must be raised before the Merit System Board.

P.E.R.C. NO. 94-92

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ROCKAWAY,

Petitioner,

-and-

Docket No. SN-94-33

ROCKAWAY TOWNSHIP POLICEMEN'S  
BENEVOLENT ASSOCIATION, LOCAL  
NO. 287,

Respondent.

Appearances:

For the Petitioner, Courter, Kobert, Laufer, Purcell & Cohen, attorneys (Fredric M. Knapp, of counsel; Laura Lencses McLester, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak, attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On October 8, 1993, the Township of Rockaway petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by a police officer represented by the Rockaway Township Policemen's Benevolent Association, Local No. 287. That grievance asserts that the Township violated the parties' collective negotiations agreement when it reassigned the police officer from the detective bureau to the patrol division.

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

The Township is a Civil Service jurisdiction. Local 287 represents the Township's police officers and sergeants. The parties entered into a collective negotiations agreement effective from January 1, 1991 through December 31, 1993. The contract has a salary article ranging from bottom to top in this order: police officer, steps 1, 2, 3 and 4; detective; sergeant, and detective sergeant. A management rights clause recognizes the employer's authority to determine qualifications for assignments, to transfer employees and to "suspend, demote, discharge, or take other disciplinary action for good and just cause, according to law...." The contract also has a non-discrimination clause. The grievance procedure ends in binding arbitration.

Harold Throne has been a Township police officer since 1978. He was assigned to the detective bureau in 1982 and served there until July 1993. Before July 1993, he had not been disciplined and had received "more than satisfactory" evaluations. As a detective, Throne received the base salary called for by the collective negotiations agreement for the position of detective: \$48,285. This salary was over \$1400 more than that paid a police officer on the highest step of the salary guide. According to the Township, this salary differential was meant to compensate detectives for being on call all day, every day. Patrol officers, but not detectives, receive a uniform allowance.

Effective March 1, 1993, William Struble was made detective bureau commander and was instructed to determine why the detective

bureau was not functioning to its full capacity and to make those changes which would best meet the needs of the police department and its overall mission. On June 29, 1993, Struble wrote a memorandum to the police chief discussing the detective bureau and recommending changes. Struble found that a lack of "cooperation and communication" was the big problem. He then evaluated each detective. About Detective Throne, he wrote:

While Det. Throne has the knowledge to handle cases, he works independent of everyone else. He has refused to show cooperation, even when he complains everyone else doesn't talk to him. He comes to work, goes to his corner, and stays there. He makes no attempt to talk to Det. Wooster, Det. O'Connor, and in many cases myself.

Even when he has a serious case, he refuses to keep me posted until the end of the workday. Det. Throne is not a team player and right now the Detective Bureau cannot survive without a full team.

I have spoken to Det. Throne on numerous cases, March 9, 23, 29, and March 31st. I again spoke with him on April 12 and 14, and again on June 14, 15, 16, and lastly June 22nd.

Struble then recommended Throne's removal from the detective bureau and cited these reasons:

1. Fails to properly communicate among other members - During one incident, I ordered him to speak to Det. Wooster. Instead he left a note and walked right by Det. Wooster without a word. He makes no attempt to just sit down and open the lines of communication.
2. Argumentative - Harold continually questions orders and directives. One such incident I reminded him of the Directed Patrol in Birchwood. He asked: "How long will this go on?" When I told him until further notice, he demanded to know when that was.

3. Improper handling of cases - On several occasions his handling of cases was questionable. In one such case, he stated it was not an Assault, yet a young girl did in fact commit an assault upon her mother.

4. Attitude - In one case he felt it was a waste of time because the suspect committed acts all over the State and he may not show for court.

5. Esprit de Corps - Harold has shown very little, if any at all, Esprit De Corps. He shows no desire to go to Detective Meetings, even when working. I see no drive or desire by him to work as a team member, yet this is his biggest complaint.

6. Disobeying of orders - The most serious complaint is that which cannot be avoided. Harold has on several occasions disobeyed both direct and written orders. I did advise him not to file cases without my prior approval. He not only filed cases, but took exceptional clearances, and took it on his own not to pull a case.

When questioned as to why, he stated I was not available, yet he again failed to obey a written order that in my absence he was to speak with Det. O'Connor or Deputy Chief Daley.

Struble concluded that these reasons were "only a summary of the incidents which should show that Det. Throne is not a team player, nor is he a credit to the Detective Bureau." Given these reasons, an increase in workload, understaffing, and a new State narcotics assignment; Struble recommended Throne's immediate reassignment to patrol and replacement by another named police officer who had training and experience as a detective; was highly motivated; was working on narcotics cases already; was willing to work steady afternoons; was willing to communicate and cooperate with other detectives; and wanted and deserved the assignment.

On July 1, 1993, Struble informed Throne of his recommendation. Throne was transferred and his salary was reduced to \$46,857, the salary paid a police officer on step four. Throne filed a grievance asserting that the transfer violated the contractual provisions cited earlier.

The police chief denied the grievance, concluding that Struble was not biased and Throne had not been singled out. The business administrator and the mayor also denied the grievance. The Mayor concluded that the transfer was not disciplinary, but merely a command decision to change the bureau's chemistry and that there was no evidence of discrimination.

Local 287 demanded binding arbitration. It identified the grievance to be arbitrated as "unjust discipline." This petition ensued.

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 employer may have.

Management has a prerogative to transfer or reassign an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). This is usually so even if a reassigned 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). We have therefore often restrained arbitration over reassignments from the detective division to another division. 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); Oakland; City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990).

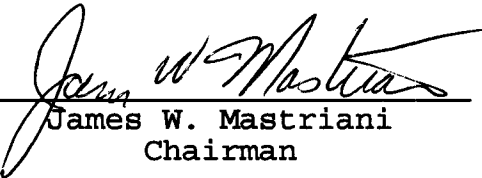
Despite this caselaw, we have also held that the discipline amendment to N.J.S.A. 34:13A-5.3 permits binding arbitration over a police officer's reassignment if: (1) the reassignment is disciplinary, and (2) the officer has no alternate statutory appeal procedure. Ocean Tp., P.E.R.C. No. 93-13, 18 NJPER 442 (¶23198 1992); Atlantic City; Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986); see generally CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984). However, even if this reassignment were disciplinary,

Throne would have an alternate statutory appeal procedure under Civil Service laws by which he could seek to contest an allegedly unjust demotion. City of Long Branch. Therefore, regardless of whether this reassignment was disciplinary or not, we are compelled to restrain arbitration.<sup>1/</sup>

ORDER

The request of the Township of Rockaway for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Regan and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioner Bertolino was not present.

DATED: March 29, 1994  
Trenton, New Jersey  
ISSUED: March 30, 1994

---

<sup>1/</sup> Given this conclusion, we need not consider what effect State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), has on the line of precedents permitting employers to agree to arbitrate disciplinary reassignments of police officers without alternate statutory appeal procedures.