P.E.R.C. NO. 98-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF DUMONT,

Petitioner,

-and-

Docket No. SN-98-15

PATROLMAN'S BENEVOLENT ASSOCIATION
(PBA) LOCAL 83 (DUMONT UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Dumont's request for a restraint of binding arbitration of a grievance filed by the Patrolman's Benevolent Association (PBA) Local 83 (Dumont Unit). Local 83 asserts that the Borough violated the parties' contract when it disciplined a sergeant by reassigning him from the detective bureau into a patrol position and by reducing his compensation. The Borough concedes that this reassignment would be legally arbitrable if it was disciplinary and Local 83 has submitted a certification indicating the reassignment was disciplinary. Given the arguments and facts in this case, the Commission declines to restrain arbitration over the reassignment. The Commission also declines to restrain arbitration over the reduction in compensation since nothing would preclude an agreement to continue compensation at the detective level after a reassignment.

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, Ruderman & Glickman, attorneys
(Joel G. Scharff, on the brief)

For the Respondent, Loccke & Correia, attorneys
(Joseph Licata, on the brief)

DECISION

On August 11, 1997, the Borough of Dumont petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Patrolman's Benevolent Association (PBA) Local 83 (Dumont Unit). Local 83 asserts that the Borough violated the parties' contract when it disciplined Sergeant Joseph Faulborn by reassigning from the detective's bureau into a patrol position and by reducing his compensation.

The parties have filed exhibits and briefs. Local 83 has also submitted Faulborn's certification.[1/] These facts appear.

1/ The Borough received one extension of time to file a reply and then sought a second extension. The second request was filed several months after the deadline; the delay was not explained; and Local 83 objected. The second request was therefore denied.

Local 83 represents all the Borough's police officers except the chief of police. The parties have entered into a collective negotiations agreement effective from January 1, 1996 through December 31, 1999. The grievance procedure ends in binding arbitration. A grievance is defined as "claim by a police officer that ... there has been inequitable, improper or unjust application, interpretation, violation, modification or change of a policy, agreement or administrative decision affecting the terms and conditions of his/her employment." An article entitled Management Rights states that the employer retains the right to "suspend, promote, demote, transfer, assign, reassign, discharge or take any other disciplinary action for good and just cause according to law...."

On April 1, 1981, the Borough hired Joseph Faulborn as a patrol officer. On June 14, 1992, he was reassigned to the detective bureau. On December 20, 1994, he was promoted to sergeant.

Faulborn's certification contains these assertions. Between November 1994 and October 1996, Faulborn alone performed all major detective functions such as conducting adult and juvenile investigations, preparing statistical reports, processing arrests, and coordinating investigations with other law enforcement agencies. He was "on-call" at all times. Faulborn often confronted the chief and sought additional manpower for the

detective bureau. The chief responded angrily, saying at one point "I am the Chief of Police, not you. I'll run the Department the way I want to run it." Also, the chief called Faulborn into his office several times and angrily accused him of spreading rumors about the chief's personal life.

In October 1996, the chief informed Faulborn that two patrol officers were being reassigned to the detective bureau. However, the police chief also informed Faulborn that he would be replaced by Brian Venezio as the sergeant in the detective bureau. Faulborn asserts that he had more experience, training and certifications than Venezio in detective work.

Effective October 14, 1996, Faulborn's investigations were turned over to Venezio. Faulborn asserts that when he asked the chief why he was transferred, the chief replied "I can't tell you why, but I had to do it."

From October 14 through December 31, 1996, Faulborn continued to receive the pay negotiated for the position of detective sergeant. A detective sergeant receives approximately $2,500 more in annual salary than a sergeant.

At the beginning of 1997, Faulborn's pay was reduced to the pay of a sergeant. Local 83 filed a grievance contesting this salary reduction. Local 83 asserts that the Bureau has a practice of continuing to pay detective pay to officers reassigned out of the detective bureau to patrol positions and submits an arbitration award to support this assertion.

On July 21, 1997, the Borough's attorney asked Local 83's attorney to clarify whether Local 83 was challenging both the reassignment and the loss of compensation. Local 83's attorney responded:

> The PBA's contention is that the grievant was the victim of a retaliatory/disciplinary transfer out of the Detective Bureau which entailed a reduction in pay due to the loss of a detective stipend. Although slightly different in form, the employer's actions were tantamount to a disciplinary action involving a loss of pay as if Grievant had been suspended, fined or demoted for disciplinary reasons. Additionally, it is the PBA's contention that the Employer violated the Collective Bargaining Agreement by failing to continue Grievant Faulborn's salary level following the disciplinary action.

The Borough denied the grievance; Local 83 demanded arbitration; and this petition ensued.

The Borough's brief asserted that the Borough had a managerial prerogative to reassign employees under Local 195, IFPTE v. State, 88 N.J. 393 (1982), and Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed, 78 N.J. 144 (1978). However, that brief conceded (pp. 3-4) that this reassignment would be legally arbitrable if it was disciplinary. We accept this concession for purposes of this decision. The brief then asserted that it was up to Local 83 to submit facts showing that the reassignment was disciplinary; the Borough did not have to give a reason for the reassignment unless such facts were submitted; and the Borough would be willing to reply if the PBA presented a viable claim (p.

5). Local 83 then submitted Faulborn's certification indicating that the reassignment was disciplinary. The Borough did not submit a timely reply.

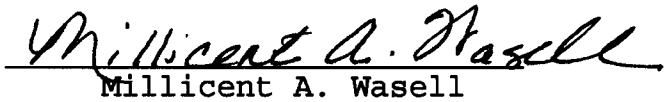
Given the arguments and facts, we decline to restrain arbitration over the reassignment. We do not consider the contractual merits of Local 83's claim or any contractual defenses the Borough may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). The Borough may present its reasons for reassigning Faulborn to the arbitrator.

We also decline to restrain arbitration over the reduction in compensation. Nothing would preclude an agreement to continue compensation at the detective level after a reassignment. Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991). Whether such an agreement exists is for the arbitrator to decide.

ORDER

The request of the Borough of Dumont for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: February 26, 1998
Trenton, New Jersey
ISSUED: February 27, 1998