

P.E.R.C. NO. 98-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SOUTH BRUNSWICK,

Petitioner,

-and-

Docket No. SN-98-03

PBA LOCAL 166,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of South Brunswick for a restraint of binding arbitration of a grievance filed by a patrol officer represented by PBA Local 166. The grievance asserts that the Township violated the parties' collective negotiations agreement when it did not appoint that officer, who was also the president of Local 166, to the position of range officer. The Commission finds that an arbitrator cannot second-guess the Township's determination that other officers were more qualified for the position of range officer.

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, Genova, Burns & Vernioia, attorneys
(Michael E. Heston, of counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder, Montalbano, attorneys
(James M. Mets, of counsel)

DECISION

On July 15, 1997, the Township of South Brunswick petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by a patrol officer represented by PBA Local 166. The grievance asserts that the Township violated the parties' collective negotiations agreement when it did not appoint that officer, who was also the president of Local 166, to the position of range officer.

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

Local 166 represents all patrol officers and detectives in the Township's police department. The parties' contract contains a grievance procedure ending in binding arbitration. Article XVI of the agreement is entitled Assignments. Section C provides:

- C. The Township agrees to make patrol assignments only based upon seniority except under exigent circumstances in the opinion of the Chief of Police. The parties agree that this language ... must be interpreted in a fashion which is consistent with PERC decisions regarding assignments which recognizes management's right to make assignments based on special qualifications, needs or training.

The contract also contains a management rights article.

On February 27, 1997, the police chief posted a notice inviting officers to apply for a range officer position in the firearms unit. Officer Martin Conte applied as did other officers. The command staff reviewed the applications; according to the chief, Conte was "found not to be one of the most qualified applicants" and two other officers were selected instead.

Conte filed a grievance. He asserted that he had been the most senior and the most qualified officer to apply and that the assignment of two junior, less qualified officers revealed the administration's bias against him. He asserted that Article XVI had been violated and he asked that he be assigned to the position of range officer.

On May 13, 1997, the Township Administrator denied Conte's grievance. He asserted that Article XVI did not apply to

the range officer position because it was not a "patrol assignment."

Local 166 demanded arbitration. It identified the grievance to be arbitrated as:

Violation of Article XVI of current agreement and all other applicable Articles by denying Ptl. Martin Conte the position of Range Officer.

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. We specifically do not consider whether Article XVI applies to this assignment.

The scope of negotiations is broader for police officers and firefighters than for other public employees because a permissive category of negotiations exists. See Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); contrast Ridgefield Park. The negotiability tests for a dispute involving a police officer are set forth in Paterson:

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 be preemptive so the question is whether negotiations or arbitration over the range officer assignment would substantially limit governmental policy.

The Township has a non-negotiable prerogative to select the best qualified applicants for positions requiring special skills. See, e.g., Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Woodbridge Tp., P.E.R.C. No. 96-8, 21 NJPER 282 (¶26180 1995). Contrast Camden Cty., P.E.R.C. No. 88-115, 14 NJPER 350, 351 (¶19135 1988) (employer may agree to use seniority as a tie-breaker among equally-qualified applicants). An arbitrator cannot second-guess the Township's

determination that other officers are more qualified than Conte for the position of range officer. While Local 166 asserts that the administration was biased against Conte because of his outspokenness as its president, that claim cannot be arbitrated given that the assignment itself is non-arbitrable. Teaneck.

ORDER

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

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: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997