

P.E.R.C. NO. 85-89

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Petitioner,

-and-

Docket No. SN-85-2

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 24,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which the Policemen's Benevolent Association, Local 24 filed against the City of Atlantic City except to the extent the grievance asserts the City failed to give proper notice of a reassignment of an officer from the day shift to night shift. The Commission holds that the City has a non-arbitrable managerial prerogative to make permanent assignments based on its assessment of particular employees' qualifications to do particular tasks.

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Appearances:

For the Petitioner, Aron & Salsberg, Esqs.
(Richard M. Salsberg, of Counsel; Rodney T. Hara,
of Counsel)

For the Respondent, Casper & Soloff, P.C.
(Alison F. Soloff, of Counsel)

DECISION AND ORDER

On July 10, 1984, the City of Atlantic City ("City") filed a Petition for Scope of Negotiations Determination. The City seeks a restraint of binding arbitration of a grievance which the Policemen's Benevolent Association, Local 24 ("Local 24") has filed against it. The grievance challenges the City's re-assignment of a police garage supervisor from the day shift to the night shift and alleged failure to give proper notice of that reassignment.

The parties have filed briefs and documents. The following facts appear.

Local 24 is the majority representative of the City's uniformed police, detectives, and special police units, excluding the chief, deputy chief and inspectors. The City and Local 24

entered a collective negotiations agreement effective from January 1, 1982 through December 31, 1983. That agreement contains a grievance procedure culminating in binding arbitration.

Prior to March 5, 1982, Captain Raymond P. Hurley and Captain Warren Byrne supervised the 8:00 a.m. to 4:00 p.m. shift at the police garage. Hurley and Byrne, respectively, had received Civil Service appointments as garage supervisors on February 13 and November 29, 1981. It appears that Hurley repaired cars more often than Byrne while Byrne kept records more often than Hurley.^{1/}

There is also a 4:00 p.m. to midnight shift at the police garage. Prior to March 5, 1982, it was unsupervised. The City determined that it needed a supervisor on this shift. On March 4, 1982, it notified Hurley that he would be assigned, effective the next day, to that position.

On March 5, 1982, Hurley filed a grievance. He asserted that he had not received the contractually required ten day notice; that the table of organization had only called for one garage supervisor -- him --; and that his seniority rights may have been violated by transferring him instead of an allegedly less senior "assistant" supervisor, Captain Byrne.

Local 24's Grievance Committee notified the City that it supported the grievance. It asserted that Hurley was entitled

^{1/} Local 24 refers to statements concerning the duties of Captains Hurley and Byrne which were supposed to be attached to its brief. They were not. Nevertheless, for purposes of this decision, we will accept Local 24's characterizations of their duties.

to work the day shift under Civil Service regulations since he was allegedly the only supervisor and Byrne was only an assistant supervisor.

On May 4, 1982, the police chief denied the grievance. He asserted that the table of organization did not state a maximum number of garage supervisors; that Byrne had received a Civil Service appointment as garage supervisor on November 29, 1981, and that seniority did not count in assignments when officers held equal rank and status according to Civil Service.

On March 27, 1984, Local 24 demanded binding arbitration. It identified the grievance as the assignment of Hurley as police garage supervisor on the 4:00 p.m. to midnight shift and the City's failure to give ten days notice of the transfer. The instant petition ensued.^{2/}

The City contends that it has a non-negotiable managerial prerogative to assign the employees it deems best qualified to supervise the day and night shifts at the police garage. The City recognizes that procedural issues such as notice provisions are mandatorily negotiable, but asserts that an arbitrator cannot revoke Hurley's assignment.

Local 24 contends that the issue is whether the City considered the relative seniority of Captains Hurley and Byrne in making the day and night shift assignments.^{3/} Local 24 does

^{2/} The parties have voluntarily postponed arbitration pending the issuance of this determination.

^{3/} Local 24 asserts that a past practice exists of making shift reassignments on the basis of seniority. For purposes of making this arbitrability determination, we will accept the truth of that assertion. Accordingly, we deny Local 24's request for an evidentiary hearing on that point.

not dispute the City's assertion that it has a managerial prerogative to determine that a garage supervisor be on duty during the 4:00 p.m. to midnight shift.


Under all the circumstances of this case, we believe that the instant grievance is not arbitrable except to the limited extent it asserts a failure to give contractually required notice. The predominant issue is the criteria for assigning police captains to supervise day and night shifts at the police garage: the City contends that it made the assignments based on its assessment of relative qualifications and Local 24 contends that the City should make the assignments based on seniority. A public employer has a non-arbitrable managerial prerogative to make permanent assignments based on its assessment of particular employees' qualifications to do particular tasks. Kearny PBA Local #21, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982); Middletown Township, P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982). That principle applies here.^{4/} While the severable notice issue is arbitrable, the arbitrator may not rescind Hurley's assignment if he finds a procedural violation.

^{4/} This case does not concern departmental work schedules or shifts. As part of our past determinations on such issues, however, we have always made clear that public employers have several reserved, non-arbitrable rights including the right to make assignments based on its assessemnt of employee qualifications. See, e.g., Township of Franklin, P.E.R.C. No. 83-38, 8 NJPER 576 (¶13266 1982); Township of Delran, P.E.R.C. No. 83-77, 9 NJPER 48 (¶14023 1982).

ORDER

The request of the City of Atlantic City for a restraint of binding arbitration is granted except to the extent the grievance asserts the City failed to give proper notice of reassignment.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
February 25, 1985
ISSUED: February 26, 1985