

P.E.R.C. NO. 90-117

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF MILLVILLE,

Petitioner,

-and-

Docket No. SN-90-34

MILLVILLE POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Millville Police Superior Officers Association against the City of Millville. The grievance asserts that the employer violated the parties' collective negotiations agreement when it transferred a lieutenant from the investigation division to the services division.

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Appearances:

For the Petitioner, Richard C. McCarthy, attorney

For the Respondent, Jacob, Robinson & Ferrigno, attorneys
(Frederick A. Jacob, of counsel)

DECISION AND ORDER

On January 11, 1990, the City of Millville petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance pressed by the Millville Police Superior Officers Association on behalf of Lieutenant Charles A. Porch. The grievance asserts that the employer violated the collective negotiations agreement when it transferred Porch from the investigation division to the services division.

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

The Association represents the City's lieutenants, sergeants and captains. The City and the Association entered into a collective negotiations agreement effective from January 1, 1987

through December 31, 1989. The grievance procedure ends in binding arbitration.

On November 1, 1985, Charles Porch was appointed a lieutenant, in accordance with a certification from the Department of Civil Services (now the Department of Personnel). He was assigned to the investigation division and was at some point put in charge. All officers in that division receive a \$600 stipend. No ordinance governs the establishment, abolishment, or reorganization of detective positions.

On July 1, 1989, Porch was reassigned to lieutenant in charge of the services division and was notified that he would also become bureau training officer. On the organizational chart, Porch's new position is lateral to his old one. No disciplinary action led to this transfer. Nor was any civil service action taken before or after the transfer. Eight other transfers were effective between July 1 and 4, 1989. In the last five years there have been 22 transfers into and out of the investigation division.

On July 18, 1989, Porch grieved his reassignment and stipend loss. He met with the chief and asserted that the reassignment was a demotion violating civil service and other statutes. The chief and director of public safety both denied this grievance.

On October 17, 1989, the City Commissioners conducted a hearing. The City clerk also asked the Department of Personnel ("DOP") about Porch's civil service rights. On October 20, 1989, a DOP Assistant Regional Administrator wrote this response:

1. Detective is not a rank, it is merely an assignment. Therefore, such assignment can be removed at anytime by the appointing authority.
2. The assignment of Detective or its withdrawal does not cause one to become subject to either a promotion or a demotion.
3. Because it is an assignment no rights to the position are obtained.

On October 24, 1989, the Commissioners denied the grievance. Noting that the City did not have a separate civil service title for lieutenant-investigator, they concluded that the change in positions was a reassignment within the chief's prerogative rather than a demotion.

On November 6, 1989, the Association demanded arbitration, asserting that the transfer amounts to a demotion in violation of civil service statutes and regulations. This petition ensued.

The City asserts that it had a managerial prerogative and a statutory right under N.J.S.A. 40A:14-118 to reassign Porch. The Association argues that Falcone v. De Furia, 103 N.J. 219 (1986) requires that this reassignment be viewed as a demotion under civil service law, thus making this grievance legally arbitrable.

The substantive decision to transfer or reassign an employee is generally neither negotiable nor arbitrable. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); 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 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); Warren Cty. Freeholder Bd., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985). We have therefore restrained arbitration over a transfer, like this one, from the detective division to another division. Oakland.

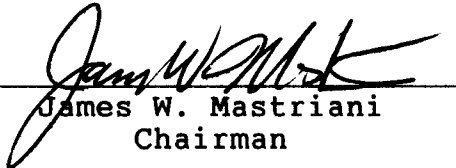
Despite this caselaw, the discipline amendment to N.J.S.A 34:13A-5.3 permits binding arbitration over a police officer's transfer if: (1) the transfer is disciplinary, and (2) the transferred employee has no alternate statutory appeal procedure. City of Atlantic City; Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986); see generally CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984). Neither condition has been met. First, there is no evidence that the reassignment was punitive or connected to a disciplinary action. Second, if the Association's interpretation of De Furia is correct and the transfer is a demotion under civil service law, then Porch has an alternate statutory appeal procedure for contesting the transfer. Sayreville Bor., P.E.R.C. No. 87-160, 13 NJPER 585 (¶18217 1987); Woodbridge Tp., P.E.R.C. No. 86-39, 11 NJPER 626 (¶16219 1985). The Association must present that argument to the Department of Personnel, subject to its right to appeal an adverse ruling if that department rejects its interpretation of De Furia.^{1/}

^{1/} We express no opinion on this question of civil service law.

ORDER

The City's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Wenzler voted in favor of this decision. None opposed. Commissioners Smith and Ruggiero were not present.

DATED: Trenton, New Jersey
June 25, 1990
ISSUED: June 26, 1990