

P.E.R.C. NO. 2000-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY PROSECUTOR,

Petitioner,

-and-

Docket No. SN-2000-42

DETECTIVES AND INVESTIGATORS
ASSOCIATION OF UNION COUNTY,
P.B.A. LOCAL NO. 250,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Union County Prosecutor for a restraint of binding arbitration of a grievance filed by the Detectives and Investigators Association of Union County, P.B.A. Local No. 250. The grievance contests a detective's loss of the use of a County vehicle. The Commission holds that the decision to allow employees to use employer-owned vehicles for commuting purposes is not mandatorily negotiable or legally arbitrable. The Commission restrains arbitration to the extent the grievance seeks reassignment of the vehicle to the employee or asserts that taking the vehicle away was in retaliation for his union activities. The Commission declines to restrain arbitration over the issue of compensation.

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, DeMaria, Ellis & Bauch, L.L.C.,
attorneys (Kathryn V. Hatfield, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Merick H. Limsky, on the brief)

DECISION

On October 25, 1999, the Union County Prosecutor petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Detectives and Investigators Association of Union County, P.B.A. Local No. 250. The grievance contests a detective's loss of the use of a County vehicle.

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

The PBA represents detectives, investigators, and investigator accountants. The Prosecutor and the PBA are parties

to a collective negotiations agreement effective from January 1, 1995 through December 31, 1997. The parties are in the process of executing a new agreement effective from January 1, 1998 through December 31, 2000. The grievance procedure ends in binding arbitration.

Detective Frank Miterotonda has been employed in the Prosecutor's office since 1983. He has been assigned a County vehicle since he began employment.

On January 7, 1998, the Prosecutor sent a memorandum advising all personnel that it was his policy that vehicles be assigned to office members whose duties require the use of a vehicle for more than transportation to and from work. As part of the evaluation of vehicle use, he would consider the number of vehicles the County could support based on fuel and insurance costs; use of the Special Law Enforcement Trust Fund to cover expenses for excess vehicles; the cost of repairs based on age and mileage of fleet; and the need to replace vehicles at an increasing cost. He asked each employee assigned to a vehicle to submit a written justification for the assignment, taking the policy into consideration as well as whether the work-related need for a vehicle could be satisfied by the use of a pool vehicle when on call.

On January 12, 1998, Miterotonda responded to the request for justification. He stated that he is assigned to the Criminal Case Control Unit and his duties include helping Assistant

Prosecutors prepare cases for trial. He also stated that he has been assigned for over five years as an on-call Identification Officer. In that capacity he uses the vehicle during all hours for such duties as after-hours assignments to process crime scenes; photographing autopsies after hours and on weekends, and assisting other police agencies in ID processing after normal work hours.

On February 10, 1998, the Prosecutor issued a Vehicle Policy. The policy stated that the Prosecutor would assign vehicles based on specific tasks and assignments and would determine the number and assignment of vehicles in light of the mission of the office. Employees assigned vehicles were required to sign an acknowledgment that they were aware of the policy. Miterotonda signed the acknowledgment on February 23.

At the end of July 1999, the Prosecutor ordered the Chief of Investigations, David Regal, to assign a vehicle to an assistant prosecutor who was on call. Miterotonda was on vacation and his assigned vehicle was in the garage for repairs. Regal determined that Miterotonda no longer had on-call responsibilities and reassigned his car to the assistant prosecutor.

On August 12, 1999, Miterotonda filed a grievance alleging that the employer violated Article XVI, Coercion, and Article XX, Section 1, Retention of Benefits. The attachment to the grievance states:

(1) Violation of Contract, Article XVI Coercion:

Detective Frank V. Miterotonda has been singled out and discriminated upon because of his active voice and activity in the Detective and Investigators Association PBA Local 250 as well as a member of our Contract Negotiations Committee. His activity has cost him the use of a county vehicle.

(2) Violation of Contract. Article XX Section 1. Retention of Benefits.

On Monday, August 7, 1999 Detective Frank Miterotonda lost his privilege of the use of a County Vehicle. A privilege he has enjoyed since his hiring on March 1983 as a Detective in the UCPO. This benefit was used as a recruiting tool to attract Detective Miterotonda and other experienced Law Enforcement personnel to our Office. For more than 30 years Detectives have enjoyed this privilege. Taking this privilege away is in violation of Article XX Section 1.

On September 15, 1999, the Prosecutor denied the grievance. On September 21, 1999, the PBA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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.... 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. [Id. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90,

8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The Prosecutor asserts that the deployment of vehicles is a managerial prerogative. The Prosecutor also asserts that Miterotonda's anti-union discrimination claim must be raised in an unfair practice proceeding, not arbitration. It cites Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983).

The PBA asserts that the vehicle is a benefit which was used as an incentive to attract Miterotonda to work for the Prosecutor's Office and cannot be taken away after sixteen years. It also asserts that even if the Prosecutor has a managerial prerogative to reassign the vehicle, an arbitrator can decide if the employee should be compensated for the loss of a benefit.

Morris Cty. and Morris Cty. Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984), held that the decision to allow employees to use employer-owned vehicles for commuting purposes is not mandatorily negotiable. But the same decision also held, under the circumstances of that case, that the employer was required to negotiate over offsetting compensation for the economic loss suffered by its employees. See also New Jersey Turnpike Auth., P.E.R.C. No. 93-72, 19 NJPER 154 (¶24077 1993) (employer violated Act by delaying negotiations over

compensation to offset the loss of Authority-owned vehicles for commuting).

Under Morris, the Prosecutor has a managerial prerogative to assign County vehicles. Under these facts, enforcement of an alleged agreement not to take a vehicle away from Miterotonda would substantially limit the Prosecutor's policymaking power to allocate employer-owned vehicles to employees who need them for work-related assignments. Accordingly, we will restrain arbitration over the decision to take the vehicle away from Miterotonda.

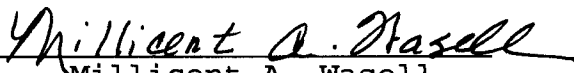
Under Teaneck, an assertion that discrimination tainted the exercise of a managerial prerogative must be made in a statutory forum, rather than through binding arbitration. See also Rutgers, the State Univ., P.E.R.C. No. 96-42, 22 NJPER 27 (¶27013 1995). We therefore restrain arbitration over Miterotonda's allegations that the loss of his vehicle was motivated by anti-union animus.

Finally, the PBA asserts that an arbitrator may decide if an employee should be compensated for the loss of the vehicle, allegedly a benefit provided as an employment incentive in 1983. The Prosecutor does not dispute that this claim is within the scope of negotiations, but does assert that this grievance does not present a compensation issue. That assertion raises a contractual arbitrability defense which can be considered by the arbitrator. Ridgefield Park. Accordingly, we decline to restrain arbitration over that issue.

ORDER

The Union County Prosecutor's request for a restraint of binding arbitration is granted to the extent the grievance seeks reassignment of the vehicle to Miterotonda or asserts that taking the vehicle away was in retaliation for his union activities.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration.

DATED: January 27, 2000
Trenton, New Jersey
ISSUED: January 28, 2000