

P.E.R.C. NO. 2000-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY BOARD OF
CHOSEN FREEHOLDERS,

Petitioner,

-and-

Docket No. SN-2000-1

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL #249
(CORRECTIONS OFFICERS),

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a grievance filed by Policemen's Benevolent Association, Local #249 (Corrections Officers) is legally arbitrable to the extent it seeks to enforce bidding for shifts as part of a relief bid system. The grievance alleged that the Burlington County Board of Chosen Freeholders violated the parties' collective negotiations agreement by eliminating "relief bids" from its seniority-based system of determining work shifts and assignments. The Commission finds the grievance not legally arbitrable to the extent it seeks to enforce an agreement to have bidding for particular posts within a relief bid system where those posts must be available for cross-training purposes.

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, Evan H.C. Crook, Burlington County
Solicitor (Daniel Hornickel, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, P.C., attorneys
(Kevin P. McGovern, on the brief)

DECISION

On July 2, 1999, the Burlington County Board of Chosen Freeholders petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by the Policemen's Benevolent Association, Local #249 (Corrections Officers). The grievance alleges that the County violated the parties' collective negotiations agreement by eliminating "relief bids" from its seniority-based system of determining work shifts and assignments. An arbitrator sustained the grievance.

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

The PBA represents corrections officers at the Burlington County Detention Facility and at the Corrections and Work Release Center, a minimum security facility. The County and the PBA are parties to a contract covering the calendar years 1995 through 1997. The agreement's grievance procedure ends in binding arbitration.

Article XIII, paragraph D provides:

All new assignments and vacant assignments which the County seeks to fill shall be posted for bid at the County's various correctional facilities for a minimum of seven (7) working days. The bid sheet shall state facility, shift, and days off as well as any special requirements for the assignments. The position shall be filled with the most senior employee who bids on the assignment and who has the minimum qualifications to perform the job. An employee shall not be permitted more than two (2) bids per year.

These provisions are also relevant:

ARTICLE XVII WORK SCHEDULES:

A. The regular starting time of work shifts shall not be changed without one (1) week notice to the affected employees unless deemed an emergency by the Jail Administrator in order to provide for the orderly running of the institution.

B. When there is more than one (1) work shift per day within a given classification, preference will be given to the most senior employee.

C. Employees shall be scheduled so as to provide five (5) consecutive working days on, followed by two (2) consecutive days off unless otherwise requested by the employee and approved by the Jail Administrator. All employees whose schedules are changed to meet emergent needs of the present work week schedules shall be notified in writing.

D. Employees shall be scheduled as follows:

7:00 AM to 3:30 PM
3:00 PM to 11:30 PM
11:00 PM to 7:30 AM

* * *

E. If employees are needed in an emergency to work a shift other than their permanently assigned shift, such temporary transfers shall be based on inverse seniority.

F. All new employees shall be assigned to on the job training (OJT) for two (2) weeks day shift 7:00 AM to 3:30 PM and two (2) weeks on the 3:00 PM to 11:30 PM shift before being placed on a post or regular schedule with permanent shift and days off.

G. All employees who have completed a four (4) month probationary period shall be assigned based on seniority a permanent shift having two (2) permanent days off unless requested otherwise in writing. Days off shall not be changed on holidays.

ARTICLE XVIII TRAINING:

A. All employees shall, within their one (1) year probationary period, be sent to COTA for formal training.

B. All employees shall be required to attend a minimum of forty (40) hours of in service training per year. All class topics will be approved by the State Department of Corrections. Classes shall cover topics that deal with State and Local Rules and Regulations, health and safety, or other training determined by the State as necessary.

Corrections officers work five days a week on one of three shifts: day, evening and overnight. An officer's post and shift are determined by a seniority-based bidding system in place since 1990 or 1991. There are two types of bids: permanent and relief.

A permanent bid puts an officer in the same post and shift for the five day workweek. Permanent bids are typically submitted by officers with high seniority who seek the most favorable work schedules (e.g. Monday through Friday day shift).

Relief bids were used to fill the permanent bid posts on the two days the assigned officer is off. An officer with a relief bid assignment worked this schedule: two days in a post and shift occupied on the other five days by a permanent bid officer; two other days as the relief for another permanent bid officer; and the fifth day in an assignment and shift determined by the warden based on operational needs. Relief bids allowed officers to work, on four out of five days, more desirable shifts than they might have obtained through permanent bids.

Officers must work overtime when management determines additional hours are necessary. Where the overtime occurs in a job which has been filled by bids, the junior employee on the shift is required to remain.

On February 24, 1999, the acting jail administrator/warden issued a memorandum to the PBA. It stated:

Effective March 14, 1999, the only permanent bid positions will be the five (5) day bids. All relief positions will not be up for bid. The days off and shift will remain the same.

The PBA filed a grievance asserting that the warden's directive violated Article XIII and noting that he had unsuccessfully tried to negotiate modifications in that article. The County denied the grievance and PBA demanded arbitration.

An arbitration hearing was held on June 17, 1999. On July 2, the County filed this petition. Because the petition preceded the arbitration award, we allowed the filing. See Butler Bd. of Ed., P.E.R.C. No. 96-24, 21 NJPER 358 (¶26222 1995).

On July 15, 1999, the arbitrator sustained the grievance. He determined that Article XIIIID applies to both permanent and relief bids. He found that before the directive, 19 of 34 positions were filled by permanent bids and 8 were filled by relief bids. After abolition of the relief bids, 21 of the 33 positions were filled by permanent bids. The arbitrator found that this change shifted more overtime to junior officers, but did not affect the total overtime available to unit members. He acknowledged that there was less flexibility under the relief bid system but found that officers on relief bids can be assigned as needed on their fifth day. He credited testimony from officers who related that when they worked a schedule set by relief bids, they had inmate contact and had worked in different assignments. The arbitrator concluded that the County had violated the collective negotiations agreement when it abolished relief bids. He noted that he was interpreting the parties' agreement and was not making a negotiability determination as that would be beyond his authority. He ordered the warden to rescind his memorandum and restore the status quo by resuming the posting procedure for relief bids.

The County asserts that so many posts and shifts are taken up by permanent and relief bids that several officers have no experience working in certain areas of the detention center and would not be prepared to address an emergency in a particular post. It has submitted an exhibit showing how the relief bid system impedes its ability to move corrections officers in and out of different shifts and assignments. It notes that in discontinuing relief bids, it did not change any officer's shift or days off.

The PBA asserts that shift bidding systems based on seniority are mandatorily negotiable and argues that the County has not shown that the relief bid system substantially limits its governmental policymaking ability. The PBA contends that employees can be assigned and trained in any position since the County has discretion to train all new employees for the first 15 months before they become eligible to submit a permanent or relief bid. It further notes that the contract protects the County's ability to make assignments of qualified officers since Article XIIID requires that officers bidding for assignments must have "minimum qualifications." The PBA also maintains that Articles XVII and XVIII protect management's rights to change work schedules and transfer employees to meet emergencies and to train both new and veteran corrections officers both in on-the-job and formalized environments.

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.

The arbitrator did not rule on any negotiability issues and we do not review the merits of the award.

The scope of negotiations for police and fire employees 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. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police officers and fire fighters:

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]

Because this dispute arises as a grievance, arbitration is permitted if the subject of the dispute is mandatorily or 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). There is no claim that relief bidding is preempted by any pertinent statute or regulation.^{1/}

In Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), mots. for clarification and recon. pending, we reviewed the case law concerning shift bidding systems. Public employers and unions may agree that seniority can be a factor in shift assignments where all qualifications are equal and managerial prerogatives are not otherwise compromised. See, e.g.,

^{1/} Although the parties are engaged in interest arbitration for a new agreement, the County did not petition for a scope of negotiations determination in response to the PBA's interest arbitration petition, Docket No. IA-98-75. See N.J.A.C. 19:16-5.5(c). Thus, there is no dispute before us as to the mandatory negotiability of Article XIIID.

City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990); contrast Borough of Highland Park, P.E.R.C. No. 95-22, 20 NJPER 390 (¶25196 1994) (clauses that base shift assignment solely on seniority are not mandatorily negotiable). However, public employers have a non-negotiable prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195; Ridgefield Park. Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996).

As we said in Camden, the interplay between these principles must be assessed on a case-by-case basis by focusing on the specific wording of a contract proposal -- or the specific nature of an arbitration dispute -- given the facts contained in the record and the arguments presented to us. 25 NJPER at 435; Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998); see also In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998). Both principles are implicated here, where the grievance seeks to enforce a contract right to bid for relief assignments on various shifts.

In this case, the combination of permanent five day bids and two day relief bids resulted in certain posts or assignments being "locked up" seven days a week. The PBA does not dispute

before us the accuracy of the employer's exhibit showing that 81 posts covering three shifts were blocked. For the day shift alone, 46 posts are locked up seven days a week. Thus, newer officers had no opportunities to gain experience in these posts.

According to the warden, less experienced officers can now be assigned to work and learn each post. By having officers learn each post, the administration will be better prepared to deal with emergencies that require flexibility in post assignments. This consideration is critical in a jail where security is a paramount concern.

The warden's contractual rights to assign relief officers on their fifth day and to assign new officers during their first 15 months of employment do not address the warden's particular concern. If most posts are already locked up 24 hours a day, seven days a week, the warden can assign officers to the remaining unfilled positions only. Given the security imperatives of a correctional facility, we find that the employer had a non-negotiable right not to permit officers to bid for the relief assignments within a particular shift.

We drew a similar distinction between shift assignments and job assignments in Camden. In that case, where the employer showed that particular assignments required special training, experience, qualifications or skills, we permitted an arbitrator to consider a union proposal for shift bidding, but not for bidding to particular assignments within a shift. In this case,

the parties' agreement may legally protect the employees' interests in having a relief bid system for selecting shifts, but this employer may deviate from the assignment aspect of the relief bid system because it has shown that locking up a significant number of specific job assignments required for training purposes would substantially limit its governmental policymaking powers.

ORDER

The PBA's grievance is legally arbitrable to the extent it seeks to enforce bidding for shifts as part of a relief bid system. It is not legally arbitrable to the extent it seeks to enforce an agreement to have bidding for particular posts within a relief bid system where those posts must be available for training purposes.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: February 24, 2000
Trenton, New Jersey
ISSUED: February 25, 2000