

P.E.R.C. NO. 2000-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-99-99

P.B.A. LOCAL 177, SOMERSET
CORRECTIONS OFFICERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Somerset County Sheriff's motion for reconsideration of P.E.R.C. No. 2000-20. In that case the Commission granted in part and denied in part the employer's request for a restraint of binding arbitration of two grievances filed by P.B.A. Local 177, Somerset County Corrections Officers. The grievances asserted that the employer violated the parties' collective negotiations agreement by discriminatorily denying female correction officers their preferred shifts and regular days off while permitting less senior male officers to choose their preferred shifts and days off. The Commission restrained arbitration to the extent the grievances, if sustained, would compromise the employer's statutory right to have at least one female correction officer on every shift. The Commission declined to restrain arbitration to the extent the Sheriff claimed a preemptive right or non-negotiable prerogative to have two or more female corrections officers on every shift. The Commission finds no extraordinary circumstances for granting reconsideration.

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, Stanton, Hughes, Diana, Salsberg,
Cerra & Mariani, attorneys (Matthew J. Giacobbe, on the
motion)

For the Respondent, Loccke & Correia, attorneys (Charles
E. Schlager, Jr., on the motion)

DECISION

On August 27, 1999, we issued a decision granting in part and denying in part the request of the Somerset County Sheriff for a restraint of binding arbitration of two grievances filed by P.B.A. Local 177, Somerset County Corrections Officers. P.E.R.C. No. 2000-20, 25 NJPER 419 (¶30182 1999). The grievances asserted that the employer violated the parties' collective negotiations agreement by discriminatorily denying female correction officers their preferred shifts and regular days off while permitting less senior male officers to choose their preferred shifts and days off. We restrained arbitration to the extent the grievances, if sustained, would compromise the employer's statutory right to have at least one female correction officer on every shift. We

declined to restrain arbitration to the extent the Sheriff claimed a preemptive right or non-negotiable prerogative to have two or more female corrections officers on every shift.

On September 24, 1999, having received an extension of time, the employer moved for reconsideration. It asserts that it is obligated by statute and regulation to have two or more female corrections officers on every shift and that our decision erodes its prerogative to determine staffing levels.^{1/}

Motions for reconsideration will not be granted absent extraordinary circumstances. N.J.A.C. 19:13-3.11; N.J.A.C. 19:14-8.4. Such circumstances do not exist here.

The employer asserts that it is obligated by statute and regulation to have at least two female corrections officers on every shift. No statute or regulation so states.

N.J.S.A. 30:8-12 mandates that the employer appoint at least one female guard over female prisoners at all hours during the night, a requirement we properly construed to cover the shifts from 4:00 p.m. to midnight and midnight to 8:00 a.m., but which does not cover the 8:00 a.m. to 4:00 p.m. shift. In its motion, the employer argues that N.J.S.A. 30:8-12 mandates that a second female officer be assigned to both nighttime shifts because the first female officer on each shift has a contractual right to a 30

^{1/} The employer has submitted a new certification, but has not explained why it did not submit this certification earlier.

minute meal break and two 15 minute breaks. When it mandated that at least one female guard be on duty at night, the Legislature perhaps wanted a female guard available to address any privacy needs a prisoner might have during that time and it presumably assumed that the one female guard might take bathroom or meal breaks herself. If prompt action is needed during a break, the employer can require the female guard to respond and take her break later. Compare Salem City Bd. of Ed., P.E.R.C. No. 82-115, 8 NJPER 355 (¶13163 1982), aff'd NJPER Supp.2d 133 (¶114 App. Div. 1983) (school board has prerogative to have school nurse respond to emergency during her lunch). But we cannot read N.J.S.A. 30:8-12 to state that a minimum of two female officers rather than one is required at night.


Regulations require that strip searches be conducted by a guard of the same sex as the prisoner. N.J.A.C. 10A-3-5.7; N.J.A.C. 10A:31-8.5(e); N.J.A.C. 10A:31-21.2. But these regulations also permit same-sex searches in an emergency. These regulations, together with N.J.S.A. 18:30-12, entitle the employer by law to have at least one female corrections officer on every shift, but do not mandate that a second female officer be on duty as well. The female guard may do strip searches, attend to prisoner privacy needs as required, and perform other duties at other times. We also note that N.J.S.A. 30:8-12 does not apply to the daytime shift and the regulations by themselves afford no basis for arguing that a second female officer is required on that shift.

The employer also asserts that it has a prerogative to determine how many female officers (besides the one female officer required by law) will be on each shift. The employer does have a prerogative to determine the total number of corrections officers it needs on duty; but it does not have a prerogative to diminish the bidding rights of female officers vis-a-vis their male counterparts or require female officers to work less desirable hours when no state law or demonstrated governmental policy need dictates such differential treatment. In light of our national and state laws prohibiting gender discrimination, we will not hold that this employer is entitled to determine employees work hours based on employee gender. See Sheriff's Silver Star Ass'n v. Oswego Cty., 56 F.Supp. 263, 80 FEP Cases 744 (N.D.N.Y. 1999) (state law entitles Sheriff to assign one female guard to jail, but basing other assignments on gender violated federal law); compare Reed v. Casey Cty., 184 F.3d 597, 80 FEP Cases 736 (6th Cir. 1999) (County had right to transfer female jailer to midnight shift because state regulation required it to have one female officer on that shift). The employer has specified no governmental policy reason for assigning additional female officers instead of male officers to each shift and there is no apparent reason to assume that such assignments would make the jail safer.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: November 15, 1999
Trenton, New Jersey
ISSUED: November 16, 1999