

P.E.R.C. NO. 2000-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ELIZABETH,

Petitioner,

-and-

Docket No. SN-99-83

POLICEMEN'S BENEVOLENT ASSOCIATION,
ELIZABETH LOCAL NO. 4,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the City of Elizabeth for a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Elizabeth Local No. 4. The grievance alleges that the City violated the parties' collective negotiations agreement by eliminating a shift for the Patrol Division and using that shift for a new Community Policing/Quality of Life Task Force. The Commission concludes that the employer had a managerial prerogative to establish the Task Force and to assign employees to that task force by matching the best qualified employees to particular positions. The Commission concludes that an arbitrator may not second-guess those assessments. To the extent the grievance contests the elimination of the 9:45 a.m. to 8:45 p.m. shift for the Patrol Division, arbitration is not restrained.

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, Genova, Burns & Vernoia, attorneys
(James J. McGovern III, on the brief; Courtney M.
Gaccione, on the reply brief)

For the Respondent, Kranz, Davis & Hersh, attorneys
(Brian P. Schechter, on the brief)

DECISION

On April 23, 1999, the City of Elizabeth petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Elizabeth Local No. 4. The grievance alleges that the City violated the parties' collective negotiations agreement by eliminating a shift for the Patrol Division and using that shift for a new Community Policing/Quality of Life Task Force.

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

The PBA represents all full-time police officers below the rank of sergeant. The parties' collective negotiations

agreement expired on December 31, 1996 and was amended for wages through June 30, 1998. The grievance procedure ends in binding arbitration.

Article XV is entitled Work Week. Sections 2 and 3 provide:

2. Work schedules shall be at the discretion of the Director. However, the Police Director retains the right to assign any Police Officer to the time and places when and where police officers are most needed.

3. Employees assigned to the Patrol Division will be scheduled on a seniority basis.

The City's police department consists of three divisions: Operations, Administration and Inspections, and Communications Command. A deputy chief is in charge of each division. Before February 1, 1999, the divisions were divided into 10 subdivisions. The deputy chief of Operations oversaw patrol administration, the patrol division, the traffic division and the community police. The deputy chief of Administration and Inspections oversaw the ambulance bureau, internal affairs bureau and the personnel department. The deputy chief of Communications Command oversaw the training division, services division and communications division.

On January 1, 1999, the police director, James Cosgrove, issued Memo #99-1, entitled "Reorganization of Operations Bureau." That memo stated:

Effective February 1, 1999, the Operations Bureau shall be reorganized to include a Community Policing/Quality of Life Task Force.

This newly formed unit shall be under the direction of a Captain and an Executive Lieutenant.

The Task Force shall include the following units within the department:

Narcotics
Street Crimes Unit
Safe Net Units
Community Police

The primary responsibility of this newly created division will be to proactively address the following quality of life issues in the city:

1. Street level narcotic sales
2. Prostitution
3. Panhandling
4. Public consumption of alcohol
5. Noise complaints
6. Graffiti
7. Illegal dumping
8. Reduce response time

In a certification, the police director states that the reason for the creation of the task force was to target "hot spots" throughout the City that experienced higher rates of crime. The reorganization resulted in the transfer of 53 police officers among the Patrol, Community Services, Community Police and Detective divisions.^{1/} The police director states that he reviewed the arrest records of each police officer and selected

^{1/} In a companion case also decided today, we have restrained arbitration of a related grievance filed by the superior officers (SN-99-77). P.E.R.C. No. 2000-15, 25 NJPER ____ (¶____ 1999). A certification in that case indicates that before February 1, 1999, there were four shifts in the Patrol Division: 6:45 a.m. to 5:45 p.m.; 9:45 a.m. to 8:45 p.m.; 5:15 p.m. to 4:15 p.m.; and 8:15 p.m. to 7:15 a.m.

the officers with the highest number of arrests for street level narcotic sales to serve in the Quality of Life Task Force. He also states he chose certain officers that are bilingual because of the City's high percentage of Hispanic citizens. He states he also took into consideration the recommendations of the commanders in the Community Policing division.

The director eliminated the 9:45 a.m. to 8:45 p.m. shift from the Patrol Division and began to use that shift for the Task Force. Some officers were moved from the night shift to the day shift for the Task Force.

On January 29, 1999, the PBA filed a grievance. The grievance asserts that eliminating the 9:45 a.m. to 8:45 p.m. shift for the Patrol division and using that shift as a schedule for the Task Force violates Article XV 3. of the parties' agreement. On February 8, the police director responded to the grievance stating that the patrol schedule for 1999 is in "total compliance" with the agreement. On February 24, the PBA demanded arbitration. This petition ensued.

The City asserts that it has a managerial prerogative to change the work schedules to provide a greater police presence and to improve public safety. The City further asserts that it has a unilateral right to reorganize its police department and reassign officers to match the best qualified officers to the more difficult assignments. It further asserts that the officers

transferred to the Task Force are no longer in the Patrol division and are no longer governed by the seniority provision in Article XV.

The PBA asserts that work schedules are mandatorily negotiable and that the schedules of these police officers have been altered in violation of the agreement. The PBA rejects the City's reasons for the creation of the Task Force and elimination of the shift for the Patrol division. It alleges that the creation of the Task Force was a subterfuge to allow the police director to hand pick officers to work the preferred shift. It asserts that the Task Force officers perform the same functions as the patrol division and therefore all of the officers are qualified and should be allowed to negotiate over who works those hours.

The City responds that the Task Force is divided into the Street Crimes Unit, the Safe Net Program, Community Police Division and Narcotics Squad. These four units are part of the Community Operations Division, not the Patrol division. The officers in the Street Crimes Unit operate unmarked cars, wear plainclothes and concentrate on areas of prevalent narcotics activity. The City points out that although patrol officers do patrol the same areas as officers in the Task Force and make arrests for the same crimes, they do not cover these high crime areas as thoroughly as the Task Force because of their duties to

patrol other areas and respond to routine calls. The City further asserts that patrol officers do not perform duties that are assigned to the Street Crimes and Safe Net Officers on remaining shifts during the day. The City also rejects the PBA's assertion that officers in the Task Force have the same skill level as patrol officers. It points to the police director's thorough review of each officer's record and background

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 City 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 policy-making 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.

This case requires us to answer three questions: Did the employer have a managerial prerogative to establish the Task Force; did it have a prerogative to staff the Task Force outside of the Patrol Division shift bidding system; and did it have a

prerogative to eliminate the 9:45 a.m. to 8:45 p.m. shift for officers remaining in the Patrol Division?

We conclude that the employer had a managerial prerogative to establish the Task Force and to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park. Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996). The parties' contract recognizes that prerogative by granting the police director the right to assign any police officer to the time and places when and where police officers are most needed. At the same time, the contract provides that employees assigned to the patrol division will be scheduled on a seniority basis.

The employer sought special skills and characteristics in staffing the Task Force. An arbitrator may not second-guess those assessments. See New Jersey Transit, P.E.R.C. No. 97-127, 23 NJPER 304 (¶28139 1997). Contrast New Jersey Transit Corp. (duration of patrol rotation cycle permissively negotiable). In addition, we will not second-guess the employer's determination that certain police officers were specially qualified to staff the Task Force.

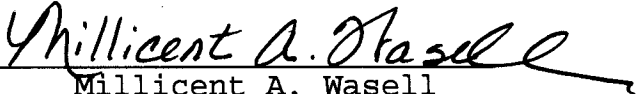
The elimination of the 9:45 a.m. to 8:45 p.m. shift for officers remaining in the Patrol Division raises different concerns. That division continues to provide round-the-clock police coverage and the employer has not asserted that it had any

prerogative to eliminate that shift. Accordingly, to the extent the grievance contests the elimination of the 9:45 a.m. to 8:45 p.m. shift for the Patrol Division, we will not restrain arbitration.

ORDER

The request of the City of Elizabeth for a restraint of binding arbitration is granted to the extent the grievance contests the establishment and staffing of the Community Policing/Quality of Life Task Force. The restraint is otherwise 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 under protest.

DATED: August 26, 1999
Trenton, New Jersey
ISSUED: August 27, 1999