

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-2004-073

CAMDEN COUNCIL NO. 10, NJCSA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the County of Camden for a restraint of binding arbitration of a grievance filed by Camden Council No. 10, NJCSA. The grievance alleges that a more senior employee was denied a shift preference in violation of the parties' contract. The Commission concludes that the County's prerogatives to match the best qualified employee to this position bars Council 10 from seeking to have an arbitrator second-guess that determination.

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, M. Lou Garty, County Counsel  
(Catherine Binowski, Assistant County Counsel, on the  
brief)

For the Respondent, Jennings Sigmond, P.C., attorneys  
(Mary L. Crangle, on the brief)

DECISION

On May 26, 2004, the County of Camden petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Camden Council No. 10, NJCSA. The grievance alleges that a more senior employee was denied a shift preference in violation of the parties' contract.

The parties have filed briefs and exhibits. The County has submitted the certification of Mary Previte, superintendent of the Camden County Youth Center. Council 10 has submitted the certification of Eunice Robinson, an employee of the Center and Council 10's representative. These facts appear.

The County is a civil service jurisdiction and employees hold New Jersey Department of Personnel job titles. Council 10 represents a broad-based unit of non-supervisory employees. The unit includes juvenile detention officers, senior juvenile detention officers, and supervising juvenile detention officers. The parties' most recent collective negotiations agreement is effective from January 1, 1999 through December 31, 2002. The grievance procedure ends in binding arbitration.

Article III is entitled Work Schedules. Section D provides:

Where more than one work shift per day within a given classification exists, employees will be given preference of shifts in accordance with their seniority. Such preference will be exercised only when vacancies occur or when for other reasons changes in the number of employees per shift are being made. In no instance, however, will a senior employee be required to wait longer than one (1) year in order to exercise his or her preference of shift over a less senior employee but such preference may only be exercised once within any twelve (12) month period and may not result in a less senior employee incurring a shift change more than once within any twelve (12) month period.

The County operates the Center for youths who have been remanded by court order. Center employees generally work in the titles of juvenile detention officer, senior juvenile detention officer, or supervising juvenile detention officer. The Center operates 24 hours a day on three shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. The Center

has three wings staffed by juvenile detention officers or senior juvenile detention officers and supervised by a shift commander.

The Center also has a separate electronic monitoring unit (EMU) staffed by three senior juvenile detention officers. The EMU is a detention alternative for youths whereby an electronic monitor is set up at the youth's home and a bracelet is placed on the youth. EMU staff work independently and have their own caseloads. Their work schedules are staggered between the hours of 8:00 a.m. and 7:00 p.m. Two employees are on call during the week at all times and one employee is on call on the weekend. The EMU staff spend at least 50% of their working time on the road away from the Center. They work one-on-one with their assigned youths and must monitor the youths every day. They interview the youths, have contact with the courts and social workers, have ongoing dialogue with the families, hook up the bracelets, and have to be available if the youths violate the program.

In May 2002, the grievant and several other juvenile detention officers were promoted to senior juvenile detention officers. The grievant sought assignment to the EMU staff. He had worked the day shift where he had seniority in his previous title. The only day shift senior juvenile detention officer position was an EMU position. The grievant was not given that assignment and was assigned to the 11:00 p.m. to 7:00 a.m. shift

in a wing unit at the Center. Another of the recently promoted officers was given the EMU position despite having less seniority than the grievant and three others.

The Center superintendent states in her certification that the EMU is staffed with employees that best suit the needs of the program. She states that the EMU requires dependable, self-motivated and disciplined staff who are ready and able to do the job independently of supervision. She states further that the EMU positions are demanding and require that the employees have good attendance, be on time, and be there to do the job and handle their own caseloads without supervision. She also states that employee disciplinary records are considered when making an assignment to the EMU.

Eunice Robinson, a Center employee and Council 10 representative, states in her certification that she has been employed at the Center for approximately 17 years and that she was one of the employees who initially worked in the EMU unit in 1999. She states that there was never any indication that any particular skill or qualification was needed to be in the EMU unit and asserts that employees receive training once they begin work in the unit. EMU employees are not replaced when absent, but their job duties either wait for their return or are performed by other EMU employees.

On June 8, 2002, Council 10 filed a grievance alleging that the grievant should have been given the EMU assignment because he had more seniority and received a higher score on the civil service examination. The grievance alleges violations of Article III, Work Schedules, and Article XXIX, Management Rights. The grievance denial states that Article XXIX allows the County to make work assignments.

Step Three of the grievance procedure provides for a hearing before a County-designated hearing officer. On June 19, 2003, the hearing officer conducted a hearing. On June 20, he recommended sustaining the grievance:

The language of Article III (D) clearly gives preference for shift selection based upon seniority. In the instant matter, this language appears to conflict with the rights of the County to determine assignments as set forth in Article XXIX (A) (4). However, the county failed to produce any evidence or testimony to indicate the assignment of Michael Tobey to the electronic monitoring unit was based upon any objective or reasonable criteria. The County and the Union agreed no special qualifications or skills were required to work in the electronic monitoring unit and the County based its decision to place . . . [another employee] in that unit on an apparent determination that he was better suited for that assignment. Without factual or objective basis for such determination, the County has effectively negated the intent of Article III and has potentially avoided the value of seniority by making the selection of shift schedule equivalent to an "assignment" rather than part of the selection of a work schedule. Based upon the foregoing, I recommend that the grievance be granted.

On July 25, 2003, the County administrator rejected the hearing officer's recommendation. He stated:

I base this decision on the language of the contract which provides that the County retains the right "[to] hire all employees, and subject to the provisions of law, to determine their qualifications and conditions of continued employment, or assignment, and to promote and transfer employees." In addition, seniority was not the only determining factor in making the assignments to the EMU. The distinguishing factors of the EMU which include, but are not limited to, working independent and having their own separate case loads, working one on one with the kids and monitoring them everyday, bringing the kids out of the facility to their homes and talking to their parents and/or guardians, and working with the Courts and social workers to determine who is appropriate for the program, were also considered.

On August 13, 2003, Council 10 demanded arbitration. This petition ensued.

The County argues that it has a managerial prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. It states that in the past all EMU assignments have been at management's discretion based on program needs, not shift preference.

Council 10 asserts that 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. It argues that the only qualification

required to work in the EMU was that the employee hold a civil service senior juvenile detention officer title, which the grievant held. Council 10 asserts that the employee assigned to the EMU has no specialized skills or qualifications that would make him more qualified than the grievant. Council 10 urges denial of the petition, or in the alternative, seeks a plenary hearing.

The County makes the following assertion in reply. When the EMU was established in 1999, the County was going to use a new civil service title for the EMU position, but to do so would have opened the position to all County residents and excluded most Center employees due to veteran's preference and other factors. In order to offer the opportunity to Center employees, the County and Council 10 agreed to choose among employees in the senior juvenile detention officer title to fill the new EMU positions. Council 10 was aware that the Job Specification for the senior juvenile detention officer and the job duties and responsibilities of the EMU position were very different. The employees assigned to the EMU must work independently without close supervision. No wing employees can replace absent EMU employees and EMU employees have different overtime arrangements and are not included on the Youth Center's overtime list.

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.

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

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

Public employers and majority representatives 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., 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 managerial prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs and an arbitrator cannot second-guess those determinations. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), recon. den. P.E.R.C. No. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd 27 NJPER 357 (¶32128 App. Div. 2001); cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996).

In a case like this involving both changes in a job and shift assignment, we must assess the negotiability of seniority bidding by focusing on the facts contained in the record and the arguments presented to us. 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).

There is no dispute that the EMU positions are separate and different from others at the Youth Center. We note that at the third step hearing before the employer's hearing officer, the County agreed that no special qualifications or skills were required to work in the EMU. Nevertheless, the County asserted that the employee it selected was better suited to the EMU position. In rejecting the hearing officer's recommendation, the County administrator explained that the distinguishing factors of the EMU include "working independent and having their own separate case loads, working one on one with the kids and monitoring them everyday, bringing the kids out of the facility to their homes and talking to their parents and/or guardians, and working with the Courts and social workers to determine who is appropriate for the program. . . ." Council 10 does not dispute these assertions,<sup>1/</sup> but characterizes the employer's argument about qualifications as one about the overall fitness of an employee for the position. That distinction does not affect our analysis. Whether characterized as qualifications or suitability for assignment to an EMU position, the employer's prerogative to match the best qualified employee to this EMU position bars

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<sup>1/</sup> Accordingly, there is no need for a hearing, as requested by Council 10. The grievance hearing officer was apparently limited to a review of contractual issues. There is no indication of any consideration of the negotiability of the dispute. Even if there were, we would not be bound by it. Ridgefield Park.

Council 10 from seeking to have an arbitrator second-guess that determination. See, e.g., City of Elizabeth, P.E.R.C. No. 2000-15, 25 NJPER 407 (¶30177 1999) (employer had uncontestable right to determine that certain sergeants had special characteristics warranting assignment to task force); contrast Camden (continuity in position not sufficient to remove two positions from shift bidding).

ORDER

The request of the County of Camden for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Mastriani, Sandman and Watkins voted in favor of this decision. Commissioner Katz voted against this decision.

DATED: September 30, 2004  
Trenton, New Jersey  
ISSUED: September 30, 2004