

P.E.R.C. NO. 2006-54

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,  
  
Petitioner,

-and-

Docket No. SN-2006-034

P.B.A. LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by P.B.A. Local 304. The grievance asserts that NJ Transit violated the parties' collective negotiations agreement when it removed unit members from the Field Training Officer Program without explanation. The Commission concludes that while reassignments and transfers are generally neither negotiable nor arbitrable, grievances seeking adherence to procedures attendant to such personnel moves can be arbitrated. The Commission grants a restraint over the claim that NJ Transit violated the contract by removing officers from the Field Training Program, but denies a restraint over the claim that it was contractually required to explain why officers were removed as Field Training Officers.

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, Nancy Kaplen, Acting Attorney  
General of New Jersey (Sharon Price-Cates, Deputy  
Attorney General, on the brief)

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

DECISION

On October 20, 2005, New Jersey Transit Corporation ("NJT") petitioned for a scope of negotiations determination. NJT seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 304. The grievance asserts that NJT violated the parties' collective negotiations agreement when it removed members from the Field Training Officer Program without explanation.

The parties have filed briefs and exhibits. NJT has filed the certification of Chief Joseph C. Bober. These facts appear.

The PBA represents transit police officers below the rank of sergeant. The parties' collective negotiations agreement is effective from July 1, 2002 through June 30, 2006. The grievance procedure ends in binding arbitration.

Article I, Section 2 provides:

Police Officers may serve as appointed by the Chief of Police in appointed positions such as Detective, Anti-Crime Unit, Canine Corps, Clerical, Training and Staff shall not be subject to those provisions of this Agreement that involve bulletining, awarding or the exercise of seniority.

Article II, Management Rights, provides:

It is understood and agreed that NJ TRANSIT possesses the sole and exclusive right to conduct NJ TRANSIT business, to manage and direct its affairs, to fulfill its lawful obligations, and that all management rights repose in it except as specifically modified or limited by the terms of this Agreement. It is further agreed and understood that all rights of management are retained by NJ TRANSIT, unless otherwise specifically restricted by this Agreement and/or the provisions of applicable law.

Article XLVIII, Discipline, provides, in part:

Except as otherwise provided by law, a Transit Police Officer shall not be removed from employment or position for political reasons for any cause other than incapacity, misconduct, or disobedience of rules and regulations established by the New Jersey Transit Police Department nor shall such Officer be suspended, removed, or fired, from employment or position therein, except for just cause as hereinbefore provided.

Field Training Officers (FTOs) provide "on-the-job" training for probationary police officers following their graduation from the police academy. FTOs must have a minimum of three years' experience in the NJT police department. They take a Field Training Officer course, serve as coaches or role models for probationary officers and evaluate their performance. The Chief

asserts that FTOs are selected based on factors unrelated to seniority and their assignment back to regular full-time police duties is a matter of his managerial prerogative to select and retain the best persons for the assignment. He states that FTOs must provide guidance and leadership to the probationary officers. An FTO candidate must be a model police officer in attendance, productivity, record of discipline, record of commendations, report writing and endorsement from supervisors or commanding officers.

While serving as FTOs, officers remain in their regular assignments. During a few weeks out of the year they work with a probationary officer. They are paid an additional 1.5 hours of straight-time pay to compensate for preparation of reports and documents concerning the probationary officers. On days when FTOs are not assigned to probationary officers, no additional compensation is paid.

On April 29, 2005, the PBA filed a grievance asserting that certain unit members were removed from the Field Training Program without cause in violation of Article I, Recognition; Article X, Retention of Benefits; Article XX, Grievance Procedure; Article XLVIII, Discipline; and past practice. The grievance seeks lost wages, restoration to the Field Training Program, and any other appropriate remedies. On May 20, the Chief denied the grievance. On June 13, the PBA demanded arbitration. This petition ensued.

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 merits of the grievance or any contractual defenses the employer may have.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters.<sup>1/</sup> Arbitration will be 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). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers. No statute or regulation is asserted to preempt negotiations.

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<sup>1/</sup> N.J.S.A. 27:25-15.1.a provides that the scope of negotiations for NJT police officers is to be the same as under the New Jersey Employer-Employee Relations Act.

NJT argues that the selection and removal of training personnel are within its managerial prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs.

The PBA states that its grievance challenges "the employer's ability to remove officers from the FTO position without any explanation." It notes that the Chief cites attendance as a factor in making FTO assignments and contends that he has improperly applied a sick leave policy that has recently been restricted after an arbitration decision. It alleges that FTOs who were legitimately using sick days were penalized in violation of the agreement.

The PBA also argues that the officers were removed from their FTO assignments to avoid paying the additional 1.5 hours of compensation and that officers have now been assigned to those positions without being given the formal title in violation of Article I. The PBA argues that the facts surrounding the officers' removal from the FTO assignments should be brought before an arbitrator and that removing an officer from an FTO position is the same as removing an officer from a position that he or she has secured through bidding procedures.

NJT responds that reassignments of police are not mandatorily negotiable and that the unsupported assertion that these reassignments were disciplinary is not negotiable. It maintains that given the Chief's prerogative to select his

training staff, there is no obligation to articulate any reason for reassignments back to regular duty.

Public employers have a non-negotiable prerogative 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. We have applied this principle in cases involving these parties. In New Jersey Transit, P.E.R.C. No. 97-127, 23 NJPER 304 (¶28139 1997), and New Jersey Transit, P.E.R.C. No. 2006-36, 31 NJPER 358 (¶143 2005), we restrained arbitration of grievances asserting, respectively, that the chief's assignments to a new Mobile Enforcement Unit (MEU) and a new emergency preparedness and vigilance unit (JUSTICE) violated seniority bidding procedures. We held that the employer had a non-negotiable prerogative to select the officers the chief believes are best suited for team assignments and bidding for the positions would substantially limit management's prerogative to make selections based on its assessment of employee qualifications.

Our cases also hold that reassignments of police officers, either into or out of positions involving special skills and qualifications, are not arbitrable, even when the employer acts for disciplinary reasons. See City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990) (restraining arbitration of non-disciplinary reassignment from detective to patrol); Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30002 1998)

(disciplinary transfer of officer). We have no basis to distinguish the analysis in those cases. We accordingly restrain arbitration of the grievance to the extent it contests the reassignment of FTO officers.

While transfers and reassignments are generally neither negotiable nor arbitrable, grievances seeking adherence to procedures attendant to such personnel moves can be arbitrated. Local 195 at 417 (1982) (negotiating transfer/reassignment procedures will not significantly interfere with substantive policy determination). The PBA asserts that NJT failed to explain the reassignments. NJT maintains that its prerogative to reassign relieves it of any duty to state reasons for its actions. Court and Commission cases recognize that an explanation of the reasons behind an employer's personnel action intimately and directly affects the employees involved and is a mandatorily negotiable personnel procedure. See Camden Cty. Sheriff, P.E.R.C. No. 2004-46, 30 NJPER 33, 36 (¶10 2004) (holding mandatorily negotiable proposal requiring notice and specification of charges before officer is removed from assignment for disciplinary reasons); Borough of Oakland, P.E.R.C. No. 96-58, 11 NJPER 713, 714 n.4 (¶16248 1985) (statement of reasons for a transfer mandatorily negotiable). Cf. Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80, 91 (App. Div. 1981) (public employees are entitled to know the basis upon which



they will be evaluated in order to conduct themselves accordingly and know how a personnel decision was made). We therefore will allow arbitration over the PBA's notice claim.

Finally, in its brief, the PBA states that it seeks to arbitrate a claim that NJT has been assigning FTO duties to other officers without giving them that title and the additional stipend. NJT did not respond to that issue in its reply brief. Since the issue is not clearly in dispute, we will not address it further.

ORDER

The request of New Jersey Transit for a restraint of arbitration is granted over the claim that NJT violated the contract by removing officers from the Field Training Program. The request for a restraint is denied over the claim that NJT was contractually required to explain why the officers were removed as Field Training Officers.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: January 26, 2006

Trenton, New Jersey