

P.E.R.C. NO. 2007-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ELIZABETH,

Petitioner,

-and-

Docket No. SN-2006-092

P.B.A. 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 P.B.A. Local No. 4. The grievance asserts that the City violated the parties' collective negotiations agreement when it transferred two police officers from the detective division to the patrol division and reduced their pay accordingly. The Commission grants the request to the extent the grievance contests the substantive decisions to transfer officers from the detective to patrol division and seeks their reinstatement as detectives and the return of their detective shields. The Commission denies the request over the claims that the police director told the officers that he was disciplining them but did not tell them why or give them an opportunity to defend themselves; and that the City failed to notify the PBA when a unit member was served with disciplinary charges. These are mandatorily negotiable procedural issues that may be considered by an arbitrator independent of the substantive decision to transfer the officers. The Commission also denies the request over the claim that the officers were contractually entitled to continue to receive their pre-transfer pay.

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 & Vernioia, attorneys  
(Brian W. Kronick, on the brief)

For the Respondent, Perrotta, Fraser & Forrester, LLC,  
attorneys (Donald B. Fraser, Jr., on the brief)

DECISION

On June 6, 2006, the City of Elizabeth petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 4. The grievance asserts that the City violated the parties' collective negotiations agreement when it transferred two police officers from the detective division to the patrol division and reduced their pay accordingly.

The parties have filed briefs and exhibits. The PBA has submitted the certifications of the two officers and the City has submitted the certification of its police director. These facts appear.

The City is a merit system jurisdiction. The PBA represents all full-time police officers. The parties' collective negotiations agreement is effective from July 1, 2005 through June 30, 2009. The grievance procedure ends in binding arbitration.

The ordinance establishing the department sets forth these positions in addition to the police director:

Chief	1
Deputy chiefs	3
Captains	10
Lieutenants	20
Sergeants	36
Police officers assigned detective - first grade	30
Police officers assigned detective - second grade	28
Police officers	234

Article XXXVI of the contract is entitled Detective. It makes "employees assigned as Detectives" eligible for additional compensation beyond the annual salaries paid police officers. Detectives - first grade receive an extra \$3100 and detectives - second grade receive an extra \$2500. Section C states:

In the event the City seeks to relieve a Police Officer of his or her Detective salary and/or badge, the Police Officer may file a grievance thereon.

On July 25, 2000, the police director issued a Personnel Order to all commanders entitled Promotion of Personnel. It stated that 15 police officers, including Christopher Flatley and Lawrence Smith, would be promoted to the rank of detective at a

ceremony in City Council chambers and that families were invited to attend the ceremony. All rosters and emergency indexes were to reflect the changes in assignment.

Officers Smith and Flatley state that the mayor presides over all promotional ceremonies and no ceremonies are held for assignments. The director responds that the position of detective has always been treated as an assignment and the memorandum and ceremony were meant to increase morale rather than confer official promotions. Flatley was later made a detective - first grade.

In October 2005, the director met with Flatley and Smith and told them they would be reassigned from detective to patrol. Flatley and Smith state that the director told them they were being demoted to punish them. The director denies that he told them they were being demoted.

On November 3, 2005, as part of a reorganization, the director issued S.O. #1900 entitled Transfer of Personnel. Eleven officers were to be transferred effective November 14. Smith and Flatley were to be transferred to the patrol division. However, according to the director, these transfers did not take place until December 21 because of a clerical error. Both officers thus initially kept their detective shields and stipends. On December 21, the captain informed them that their base salary would be reduced to that of a top-grade patrol

officer and that they would have to surrender their shields by December 26.

On December 27, 2005, the PBA filed a grievance with the director. The grievance asserted, in part:

It is abundantly clear you are demoting and reducing the pay of these two PBA members, as some sort of disciplinary measure. However, no charges whatsoever have been preferred against either officer, and neither has had any opportunity to defend himself.

If you contend that the nature of the demotion and reduction in pay is non-disciplinary in nature, then, still, the PBA contends that same constitutes a substantial change in the terms and conditions of the employment of these two officers. Article XXXIX, Maintenance of Standards, would bar same.

Moreover, the PBA would draw your specific attention to Paragraph XXXVI(C) of the Collective Bargaining Agreement.

The PBA and Officers Smith and Flatley, hereby formally grieve your action. The remedy requested is the immediate reinstatement of both to their former rank/assignment of Detective, restoration of their shields, and an award of back pay for the period for which the detective stipend is withheld. Moreover, the PBA demands that, in the future, you cease and desist from the practice of attempting to unilaterally effectuate such discipline, demotions, or reduction in pay without cause.

The grievance also alleges that the City disregarded the past practice of notifying the PBA of any disciplinary charges.

On December 29, 2005, the director denied the grievance. He wrote, in part, that at the time of the transfers:

[I]t was clearly communicated to the P.B.A. Leadership that Smith and Flatley were being reassigned to the Patrol Division and they would lose their detective status. Due to clerical error, these officers were not ordered to surrender their detective shields nor was payroll notified to make the necessary adjustments. This was brought to my attention in early December 2005 and I ordered the surrender of their detective shields and notified payroll to make the necessary adjustments.

Your grievance letter makes reference to a demotion and I would, at this time, refer you to the Department of Personnel who does not recognize the position of detective as a rank. Therefore, no demotion has occurred.

The City of Elizabeth does recognize the position of detective via city ordinance and it is my position that the compensation that accompanies the detective status goes with the position not the individual. . . .

He also wrote that making detective assignments permanent would unduly hinder departmental operations.

On May 4, 2006, the PBA, reiterating the assertions in its grievance, demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park 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 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 (1981), sets forth the tests for determining whether a dispute involving a police officer is within the scope of collective negotiations. Under Paterson, arbitration will not be restrained unless the agreement alleged is preempted or would substantially limit government's policymaking powers.

The City argues that it has a non-negotiable prerogative to transfer police officers; the two officers were transferred rather than demoted; and in any event, civil service statutes and regulations require that any claim that an officer was unjustly demoted be presented to the Merit System Board.

The PBA does not contest the City's right to reassign the two officers to the patrol division, but it does contest their alleged demotions and the loss of their detective shields and pay. It also asserts that if the transfers were disciplinary, as it contends, the officers should have been given a preliminary notice of discipline and an opportunity to defend themselves.

We have often restrained arbitration over claims contesting the substantive decision to transfer a police officer from detective to patrol officer. See, e.g., Borough of New Milford,

P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998); Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991); City of Long Branch, P.E.R.C. No. 92-53, 17 NJPER 506 (¶22248 1991); City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990). It does not matter whether the personnel action is disciplinary or not. If it is a non-disciplinary transfer, management has a prerogative to transfer an employee to meet the governmental policy goal of matching the best qualified person to a particular job; if it is a disciplinary transfer, it is not minor discipline under N.J.S.A. 34:13A-5.3 and therefore it is outside the sphere of personnel actions that a municipal police officer can arbitrate. New Milford (arbitrable minor discipline under section 5.3 includes fines or suspensions of five days or less but not reassignments of police officers). We will therefore restrain arbitration to the extent the grievance contests the transfers and seeks the officers' reinstatement as detectives and the return of the shields that signify that they have the status of detectives.

We will not restrain arbitration over three other issues. The first is the claim raised in the grievance that the police director told the officers that he was disciplining them, but did not tell them why or give them an opportunity to defend themselves. The second is the claim raised in the grievance that the City failed to notify the PBA when a unit member was served



with disciplinary charges. Both these claims raise procedural issues that may be considered by an arbitrator independent of the substantive decision to transfer the officers. City of Newark, P.E.R.C. No. 2001-37, 27 NJPER 46 (¶32023 2000) (bringing formal charges before invoking disciplinary transfer is legally arbitrable); Newark Bd. of Ed., P.E.R.C. No. 80-93, 6 NJPER 53 (¶11028 1980) (notice of discipline is mandatorily negotiable). The third is the claim raised in the PBA's brief that the officers were contractually entitled to continue to receive their pre-transfer pay. We follow Wayne Tp., in which we declined to restrain arbitration of a claim that the parties had agreed to permit transferred officers to retain the detectives' increment in recognition of their being more qualified, trained and experienced police officers. See also Borough of Dumont, P.E.R.C. No. 98-111, 24 NJPER 168 (¶29083 1998). We repeat, however, what we said in Wayne: "If the PBA cannot prove the existence of an agreement to continue the stipend after a transfer from the detective bureau, it would follow that the salary reduction was a direct consequence of the managerial decision to transfer the grievants." Id. at 44. Thus, absent such an agreement, an arbitrator cannot order that the officers continue to receive detective pay.

ORDER

The request of the City of Elizabeth for a restraint of binding arbitration is granted to the extent the grievance contests the substantive decisions to transfer officers Smith and Flatley from the detective division to the patrol division and seeks their reinstatement as detectives and the return of their detective shields. The request is otherwise denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: September 28, 2006

Trenton, New Jersey