

P.E.R.C. NO. 2007-23

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-2007-014

P.B.A. LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants 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 contests the continuing assignment of two police officers to temporary undercover duty. The Commission holds that this dispute is not about procedures for selecting officers for temporary assignments, but about the substantive decision to assign two officers based on their individual qualifications for undercover work. The Commission holds that an arbitrator may not second-guess that decision.

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, Stuart Rabner, Attorney General  
(Sharon Price-Cates, Deputy Attorney General, on the  
brief)

For the Respondent, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Marcia J. Tapia, on the brief)

DECISION

\_\_\_\_\_ On August 28, 2006, 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 contests the continuing assignment of  
two police officers to temporary undercover duty.

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

The PBA represents NJT's 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 XXIII is entitled Advertisement and Selection of Positions. Section 6 provides:

(a) A temporary position may, at the discretion of the Chief of Police, be assigned to an officer for a period not to exceed (60) calendar days.

(b) After a (60) calendar day period or less, the assigned officer will then be reassigned to their original position and a second officer may then be assigned, then a third, etc.

(c) An officer will not be assigned to a position without at least a two calendar days' notice.

(d) An officer wishing to volunteer to work a temporary position, may do so by making his/her request in writing to the Chief of Police.

(e) An officer assigned to a supervisor's position other than their regular position, he/she shall be paid at 100% of the rate of the position to which he/she is temporarily assigned, but if such rate is less than the rate of his/her regular position, he/she shall be paid the rate of his/her regular position.

On December 16, 2005, the PBA filed a grievance that stated:

The employer did violate the Collective Bargaining Agreement between NJ Transit Corporation and the Policemen's Benevolent Association, PBA, when it did temporarily assign officers Kenny and Melendez to a position beyond the allowed time period.

The PBA became aware that the employer violated the collective bargaining agreement when it did allow officers Kenny and Melendez to be temporarily assigned to a position

beyond the allowed time frame. In addition to repeatedly assigning said officers, they were allowed to bid a position barring others from bidding same.

On January 20, 2006, Chief Bober denied the grievance. He stated that Article XXIII supports the current practice.

In his certification, Bober states that he has placed Kenny and Melendez in undercover assignments to meet operational needs and that they have routinely volunteered for undercover assignments. Undercover is not a different rank. Operational needs may require surveillance at different times, in different places and in a manner that is not obvious to the public. The chief states that Kenny and Melendez are the most qualified and best match for the assignment because both have demonstrated a high level of productivity and the ability to blend into varied and different situations and to maintain their cover. In addition, he states that their commendable work records make them exemplary candidates for undercover assignments because they can work with minimal supervision in the field.

The grievance was denied at the later steps of the grievance procedure and on March 16, 2006, 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.

N.J.S.A. 27:25-15.1a provides that the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., governs the scope of negotiations for NJT police officers. 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 under that Act for police officers. Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

NJT argues that the decision to temporarily reassign patrol officers to work undercover is not legally arbitrable. It maintains that public employers have a managerial prerogative to make reassignments--whether voluntary or involuntary, temporary or permanent--to match the best qualified personnel to particular assignments to meet operational needs.

The PBA argues that the grievance is at least permissively negotiable. It contends that the issue is not whether the

employer has the right to transfer or reassign an employee, but rather whether it has violated negotiated procedures regarding temporary assignments. The PBA argues that allowing these officers to be temporarily assigned beyond the contractual time bars other officers from bidding for these temporary positions. It maintains that NJT has not shown that the temporary position requires skills that only these two officers possess.

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; New Jersey Transit Corp., P.E.R.C. No. 97-127, 23 NJPER 304 (¶28139 1997); Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996). The chief determined that these two officers were best suited for undercover assignments. An arbitrator may not second-guess those assessments. This dispute is not about procedures for selecting officers for temporary assignments, but about the substantive decision to assign two officers based on their individual qualifications for undercover work.

The cases the PBA cites are inapt. None involved assignments based on an employer's assessment of individual qualifications. Jersey City, P.E.R.C. No. 93-75, 19 NJPER 157 (¶24080 1993) (labor cost decision to use firefighters rather

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than captains to replace absent captains); Franklin Tp., P.E.R.C. No. 95-105, 21 NJPER 225 (¶26143 1995) (dispute over whether light duty should be given to employees injured off the job); New Jersey Transit, P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996) (three month versus four month rotations for foot and road patrols).

ORDER

The request of New Jersey Transit for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: October 26, 2006

Trenton, New Jersey