

P.E.R.C. NO. 2007-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-2007-036

ORANGE POLICE SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Orange Township for a restraint of binding arbitration of a grievance filed by the Orange Police Superior Officers Association. The SOA seeks to arbitrate its claims that a police sergeant who was reassigned on two days' notice from the administrative division to the patrol division did not receive the same amount of advance notice as other reassigned officers and did not have enough notice of the reassignment to make child care arrangements. The Commission concludes that substantive decisions to transfer or reassign police officers are, as a rule, not legally arbitrable and restrains arbitration to the extent, if any, the SOA seeks to arbitrate a claim that the reassignment was improperly motivated. The Commission declines to restrain arbitration over the claims that the sergeant did not receive timely notice of her reassignments; that other officers received more advance notice; and that she was not given enough time to make child care arrangements in light of the required changes in work schedules and work hours. Such procedural claims are legally arbitrable.

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, Lum, Danzis, Drasco & Positan, LLC,
attorneys (Lauren M. Craig, on the brief)

For the Respondent, Fox & Fox, LLP, attorneys
(Lynsey A. Johnson, on the brief)

DECISION

On January 2, 2007, the City of Orange Township petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Orange Police Superior Officers Association (SOA). The SOA seeks to arbitrate its claims alleging that a police sergeant who was reassigned on two days' notice from the administrative division to the patrol division did not receive the same amount of advance notice as other reassigned officers and did not have enough notice of the reassignment so that she could make child care arrangements. We decline to restrain arbitration.

The parties have filed briefs and exhibits. The City has submitted the certification of its counsel. The SOA has submitted the certification of the grievant, Judy Rothenberger. These facts appear.

The SOA represents the City's police sergeants, lieutenants, and captains. The parties' collective negotiations agreement is effective from January 1, 2004 through December 31, 2007. The grievance procedure ends in binding arbitration.

The City has employed Judy Rothenberger since 1990. She was promoted to sergeant in 2003.

In the fall of 2005, Rothenberger took a medical leave of absence and retained an attorney to represent her in a claim that she been sexually harassed. On November 15, 2005, the attorney wrote to the City concerning her allegations. On November 22, the police director wrote an internal memorandum to a captain informing him that Rothenberger would be reassigned from the administrative division to the patrol division effective December 1. The memorandum stated that the reassignment was "based on supervisory needs and according to seniority."

At the time of the reassignment, Rothenberger was on leave. She states that she found out about the reassignment from others and that she was not personally notified or told what shift or hours she would work.

On November 28, Rothenberger filed a grievance stating:

My assignment was changed without justification. My hours were changed from Monday through Friday 7:30-3:30 to unknown hours and unknown shift within Patrol. This is not based on job performance or skill. I feel I am being singled out and harassed causing undue stress onto myself and a hostile work environment. (See follow up patrolman's report)

Request for settlement or corrective action desired:

Consistency: I have not been notified verbally or written as of what my new assignment will be. As a matter of fact as of today I still have not been given any order for my reassignment and I only know of this because it is posted on the Administration Board in the hallway. It is now two days away and I still have no idea where or what my shift is. This action is personal and not based on job performance. I am requesting I be given more time to adjust for the change in job assignment and personal responsibilities. I have a young child at home and need at least a couple of weeks to set up child care. I know for a fact several other officers were given this courtesy and I expect the same treatment.

That same day, presumably after she filed the grievance, Rothenberger received a memorandum from the captain stating that she was being transferred to the second tour, patrol division. She states that this provided her only a two-day notice to make arrangements for the care of her young child. According to Rothenberger, three other superior officers were also transferred; all received at least six days' notice; and two of

these officers were transferred to complete the job she had been performing in the administrative division.

The grievance was not resolved and the SOA demanded arbitration.^{1/} This petition ensued. Arbitration has been adjourned pending this decision.

Preliminarily, we note that the City's brief asserts that Rothenberger's transfer was the result of a department-wide effort to reduce sick leave abuses and overtime and was part of a policy of rotating officers out of the administrative division into the patrol division. However, these factual representations are not supported by a certification based on personal knowledge so we will not accept them. N.J.A.C. 19:13-3.5(f).

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

1/ The City states that another grievance was filed by Rothenberger on January 26, 2006 and the two grievances were consolidated. The City seeks a restraint of arbitration only with respect to the November 28 grievance.

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, 92-93 (1981), outlines the steps of a scope of negotiations analysis for a dispute involving police officers. As this dispute arises in the context of a grievance alleging a contractual violation, 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 to have been violated is preempted or would substantially limit government's policymaking powers. No statute or regulation is asserted to preempt negotiations.

Substantive decisions to transfer or reassign police officers are, as a rule, not legally arbitrable. See, e.g., City of Jersey City v. Jersey City POBA, 154 N.J. 555, 571-573 (1998). We therefore restrain arbitration to the extent, if any, the SOA seeks to arbitrate a claim that the reassignment was improperly motivated. See Teaneck Bd. of Ed. v. Teaneck Ed. Ass'n, 94 N.J. 9 (1983) (precluding arbitration of discrimination in the exercise of managerial prerogatives); Borough of New Milford,

P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998) (police reassignment not arbitrable even if disciplinary). However, we decline to restrain arbitration over the claims that Rothenberger did not receive timely notice of her reassignment; other officers received more advance notice; and she was not given enough time to make child care arrangements in light of the required changes in work schedules and work hours. Under our case law, it is well-established that such procedural claims are legally arbitrable. City of Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16062 1985); City of Vineland, P.E.R.C. No. 84-58, 10 NJPER 8 (¶15005 1983).

ORDER

The request of the City of Orange Township for a restraint of binding arbitration is granted to the extent, if any, the SOA claims that Judy Rothenberger's reassignment was improper. The request is otherwise denied.

BY ORDER OF THE COMMISSION

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

ISSUED: April 26, 2007

Trenton, New Jersey