

P.E.R.C. NO. 2007-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2007-045

P.B.A. LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Trenton for a restraint of binding arbitration of a grievance filed by P.B.A. Local 11. The grievance asserts that the City violated a contract article governing work hours when it transferred a patrol officer with 30 years of experience from a day shift to a night shift. The Commission concludes that this dispute centers on a change in work hours rather than any asserted governmental policy concern.

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, Laufer, Knapp, Torzewski, Dalena & Sposaro, LLC, attorneys (Stephen E. Trimboli, on the brief)

For the Respondent, Kroll, Heineman & Giblin, LLC, attorneys (Raymond G. Heineman, on the brief)

DECISION

On January 26, 2007, the City of Trenton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 11. The grievance asserts that the City violated the contract article governing work hours when it transferred a patrol officer with 30 years of experience from a day shift to a night shift. Because this dispute centers on a change in work hours rather than any asserted governmental policy concerns, we decline to restrain arbitration.

The parties have filed briefs and exhibits. No certifications were filed. These facts appear.

The PBA represents all police officers below the rank of sergeant. The parties' most recent contract is effective from July 1, 2000 through December 31, 2005. The grievance procedure ends in binding arbitration.

Article VII is entitled Hours of Employment. Section 7.02 provides:

Each officer will be assigned a set shift and will not be rotated through different shifts. The number of officers assigned to each shift will be at the City's discretion. For the initial assignment of members, based on seniority to the extent practical, but the Police Chief will have the final authority to make such assignments to ensure the efficient and effective operation of the Division.

On January 17, 2006, the Police Director issued General Order No. 2004-09 entitled "Requested Assignment Procedures, Minimum Requirements and Command Rotation Policy." The Policy and Purpose of the General Order state:

Policy

It shall be the policy of the Trenton Police Department to execute permanent transfers based upon an assessment of each police officer's performance record, the achievement of minimum experience standards and the recommendation of Superiors and Commanding Officers.

It shall be the policy of the Trenton Police Department to stress the importance of the patrol function and integrity by providing assignment advantages to officers with

specific Patrol and/or Internal Affairs experience.

Purpose

The purpose of this directive is to set forth the process by which members of the Department may request consideration for assignments and define the experience and criteria for assignment to investigative or speciality positions. This directive represents the first in a series of planned programs to formulate a career development and performance assessment process for every position within the Trenton Police Department.

Section IX of the General Order is entitled Command Rotation. It provides, in part:

A. Over the past twenty-five (25) years several notable studies have been conducted concerning police behavior and practices. An effective method of providing a broad range of experience and opportunities for individual employees is the rotation of personnel. The significance of Command Rotation is to minimize complacency, enhance performance, guard against misconduct and provide career opportunities for a larger number of police officers. The following commands shall be subject to mandatory rotation as scheduled and assignments shall be for the following maximum number of years:

Command	Rotation
1. Vice/Narcotics	4 years
2. ABC/Taxi	4 years
3. Inter-Agency Task Force Assignments	2 years
4. Vehicle Processing Investigator	3 years
5. Patrol Squad Sergeants	2 years
6. District Commander (Lieutenant)	2 years

7. Supervisors and Police Officers assigned to the 2130 to 0730 hours tour of duty 3 years

For many years, patrol officer Michael Schiaretti was assigned to the day shift (8:00 am to 6:00 pm), East District, 2nd platoon. Effective November 2, he was transferred to the night shift (10:00 pm to 8:00 am), South District, 2nd Platoon.

On November 8, 2006, the PBA filed a grievance with the Police Director asserting that the Command Policy did not warrant transferring Schiaretti from the day shift to the night shift. It alleged that Schiaretti, unlike two other reassigned officers, did not meet the rotation criteria; he had not requested reassignment; he was a 30+ year veteran without a discipline record or any violations of the Section V criteria of the Rotation Order; there was some friction between Captain Messina and Schiaretti over labor relations issues "which quite frankly bears the fragrance of retaliation and or punishment"; and at least 27 officers assigned to the day shift had less seniority than Schiaretti and 22 had substantially less. The grievance sought his return to the day shift.

The Police Director denied the grievance on the ground that transfers and reassignments are a managerial prerogative. After the business administrator denied the grievance at the next step, 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 (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.

As this dispute arises in the context of a grievance alleging a contract 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 (¶1111 App. Div. 1983). Arbitration will not be restrained unless the agreement alleged to have been violated is preempted or would substantially limit government's policymaking powers. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). No statute or regulation is asserted to preempt negotiations.

Under the circumstances presented to us, honoring an agreement (if one was made) to permit this officer to select his

work hours based on seniority does not compromise governmental policy and is within the scope of negotiations. This case involves a change in an officer's shift, not the officer's position or functions. Seniority can be a factor in shift assignments where all qualifications are equal and managerial prerogatives are not otherwise implicated. Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), aff'd 27 NJPER 357 (¶32128 App. Div. 2001). No certification explains the reasons for the change in work hours and there is thus no basis for suggesting or finding that the change was necessary in light of such considerations as special qualifications, training, or experience. See, e.g., Camden; Somerset Cty. Sheriff, P.E.R.C. No. 2000-20, 25 NJPER 419 (¶30182 1999); City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994). The three Trenton cases cited by the employer do not apply since they involved transfers that were allegedly disciplinary and in violation of a just cause clause. City of Trenton, P.E.R.C. No. 2004-52, 30 NJPER 70 (¶23 2004); City of Trenton, P.E.R.C. No. 2004-53, 30 NJPER 71 (¶24 2004); City of Trenton, P.E.R.C. No. 2004-54, 30 NJPER 72 (¶25 2004). This case does contain an allegation of retaliation, but the grievant's claim arises under a work hours clause rather than a just cause clause and the merits of that claim will rise or fall depending on the interpretation and application of the work hours clause.

ORDER

The request of the City of Trenton for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: April 26, 2007

Trenton, New Jersey