

P.E.R.C. NO. 2007-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF'S OFFICE,

Petitioner,

-and-

Docket No. SN-2007-038

SOMERSET COUNTY CORRECTION
OFFICERS, P.B.A. LOCAL NO. 177,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Somerset County Sheriff's Office for a restraint of binding arbitration of a grievance filed by the Somerset County Correction Officers, P.B.A. Local No. 177. The grievance asserts that the Sheriff's Office violated the parties' collective negotiations agreement when it refused to consider a sergeant for a permanent assignment as a "kitchen officer." The Commission concludes that the Sheriff had a non-negotiable prerogative to match employee qualifications with job functions.

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, Ogletree, Deakins, Nash, Smoak &
Stewart, P.C., attorneys (Mark Diana, of counsel;
Myung Kim, on the brief)

For the Respondent, Klatsky, Sciarrabone & De Fillippo,
attorneys (David J. De Fillippo, on the brief)

DECISION

On January 17, 2007, the Somerset County Sheriff's Office petitioned for a scope of negotiations determination. The petition seeks a restraint of binding arbitration of a grievance filed by the Somerset County Correction Officers, P.B.A. Local No. 177. The grievance asserts that the Sheriff's Office violated the parties' collective negotiations agreement when it refused to consider a sergeant for a permanent assignment as a "kitchen officer." Because the Sheriff has a non-negotiable prerogative to match employee qualifications with job functions, we restrain binding arbitration.

The parties have filed briefs and exhibits. The County has submitted its Warden's certification. These facts appear.

The PBA represents all correction officers. The parties' collective negotiations agreement is effective from January 1, 2004 through December 31, 2006. The grievance procedure ends in binding arbitration. Article XIII, Paragraph A provides:

Whenever there is a vacancy in one of the positions covered by this Agreement, a notice of the vacancy will be posted by the County, and the position will be filled according to the principles of seniority, provided the employee is qualified and willing to perform the work.

The Jail has 119 correction officers; 26 officers with the rank of corporal up through chief; and 93 unranked officers. Some correction officers are employed in administrative positions, including "kitchen officer." The kitchen officer job description includes these functions: observing inmates to prevent fights, riots, escape and tampering with food; assuring food is cooked to the correct temperature and served on time; assuring proper temperature of all refrigerated and frozen food; performing a walk through of kitchen and storage areas; logging inmate counts; reporting all incidents to the shift commander and administrative lieutenant; assuring that cleaning chemicals are kept away from the food area; maintaining all menus; removing trash; assigning inmate duties; ensuring trays are properly marked and the kitchen cleaned; performing inventory; training

officers and inmates to work in the kitchen; supervising proper storage and rotation of food; and maintaining a list for the purchasing department.

The kitchen office is in the jail's kitchen. One kitchen officer is assigned to a steady Monday-Friday day shift and another works a steady Monday-Friday afternoon shift.

Before 1996, both unranked and ranked officers held the kitchen officer positions at various times. In 1996, a sergeant who had worked as a kitchen officer was promoted to lieutenant and given an administrative position that included oversight of all kitchen operations. Since 1996, the kitchen officer post has been staffed only by unranked officers.

In 2002, the new Sheriff determined that because the administrative lieutenant oversaw kitchen operations, the kitchen officer position did not require the skill, experience, authority or compensation of a higher-ranked officer. He decided that only unranked officers would fill kitchen officer vacancies and revised the jail's table of organization accordingly. A number of officers, not permanently assigned as kitchen officers, have taken the required food-handling course so they can fill in when the permanent officer is off. And all ranked officers are required to take the course to ensure there is backup coverage.

In February 2004, a day shift kitchen officer stepped down. A notice of vacancy was addressed to "uniformed staff" and posted and an unranked officer was then appointed.

On October 1, 2006, the incumbent day shift kitchen officer stepped down. On October 3, the Chief issued a memorandum announcing a vacancy. The memorandum and the posting were erroneously addressed to "Uniform Staff." Sergeant Dean Piccone and seven officers applied. On November 1, the Chief scheduled interviews for all applicants.

When the Warden saw the sergeant on the interview schedule, he reminded the Chief that superior officers were not eligible to apply for the kitchen officer position. On November 3, 2006, Piccone was advised that he had been removed from the list because superior officers were not eligible for the position.

On November 14, 2006, the PBA filed a grievance asserting that Piccone's removal violated Article XIII. The grievance stated that the posting was addressed to Uniform Staff; the position had typically been given to sergeants; and Piccone had completed a food handlers certification class in May and was on the approved list to work in the kitchen.

The Warden denied the grievance. He stated that, since 1996, no ranked officer has been appointed as a kitchen officer; in 2002, a decision was made that the permanent kitchen officer post did not require a ranked officer; and only unranked officers

have held that position since then. The Sheriff also denied the grievance. The PBA demanded arbitration and 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), outlines the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase.

An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.
[Id. at 92-93; citations omitted]

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 (¶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.

The Sheriff has a non-negotiable prerogative to assign officers to meet the governmental policy goal of assigning the individuals best qualified for a particular duty. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998); Ridgefield Park; see also City of Jersey City, P.E.R.C. No. 2007-7, 32 NJPER 278 (¶115 2006), recon. granted on other grounds,

P.E.R.C. No. 2007-26, 32 NJPER 356 (¶149 2006) (city had non-negotiable prerogative to assign sergeants to duties within their job description that had been performed by lieutenants). Case law involving temporary or short-term assignments is distinguishable. Compare City of Camden, P.E.R.C. No. 93-43, 19 NJPER 15 (¶24008 1992), aff'd 20 NJPER 319 (¶25163 App. Div. 1994) (having firefighters serve as temporary acting captains found to be permissively negotiable). Permitting a sergeant to fill the kitchen officer position would substantially limit the Sheriff's ability to deploy the more qualified and experienced officer to a position where his skills, rank and experience can better be used.

ORDER

The request of the Somerset County Sheriff's Office for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: May 31, 2007

Trenton, New Jersey