

P.E.R.C. NO. 2010-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-2010-007

HUDSON COUNTY SHERIFF'S OFFICERS
P.B.A. LOCAL 334,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the County of Hudson's request for a restraint of binding arbitration of a grievance filed by Hudson County Sheriff's Officers, P.B.A. Local 334. The grievance asserts that the County violated the parties' collective negotiations agreement when it moved, transferred, or reassigned officers in lieu of discipline or reprimand. The Commission holds that a police officer cannot arbitrate a transfer regardless of whether it is for disciplinary reasons.

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, Scarinci Hollenbeck, attorneys
(Christina M. Michelson, on the brief)

For the Respondent, Lindabury, McCormick, Estabrook &
Cooper, P.C., attorneys (Eric B. Levine, on the brief)

DECISION

On July 20, 2009, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Hudson County Sheriff's Officers P.B.A. Local 334. The grievance asserts that the County violated the parties' collective negotiations agreement when it moved, transferred or reassigned officers in lieu of discipline or reprimand. The grievance seeks to have the County stop moving employees without just cause, grant employees a hearing prior to discipline, and reassign a specific officer back to the detective bureau. We restrain arbitration of the grievance.

The parties have filed briefs. The County has also filed exhibits and the certification of the Chief of Operations of the Sheriff's Office. These facts appear.

The PBA represents all sheriffs officers below the rank of sergeant. The parties' collective negotiations agreement is effective from January 1, 2008 through December 31, 2012. The grievance procedure ends in binding arbitration.

Article XII of the parties' agreement is entitled "Employee Rights." It provides, in pertinent part, "No officer shall be disciplined, reprimanded or reduced in rank without just cause."

The parties' agreement also contains a Management Rights clause. This clause provides the County and Sheriff with the right to transfer and reassign employees, subject to Department of Personnel^{1/} rules and regulations, to determine the size of the work force, and to reassign duties from assignment to assignment.

Article VI of the agreement is entitled "Work Hours." It provides, in pertinent part, "Assignments from one unit to another shall be determined by the Sheriff."

The County Sheriff's Office consists of two divisions- operations and court. The operations division consists of the patrol bureau and the detective bureau. Reassignment of an

^{1/} The Department of Personnel is now the Civil Service Commission.

officer from the detective bureau to the court division does not constitute a demotion; reassignment from the court division to the detective bureau does not require an examination and is not a promotion. The officers assigned to the detective bureau, however, receive a stipend based on seniority and merit. If reassigned outside the detective bureau, the stipend is no longer provided to an officer.

On November 3, 2008, the County reassigned an officer from the detective bureau to the court division. The Chief of Operations certifies that this decision was made due to staffing needs and the goal of matching the best qualified employee to a particular job.

On November 3, 2008, the PBA filed a grievance seeking the return of the officer to the detective bureau and challenging the transfer or reassignment of employees in lieu of discipline, generally. The grievance alleges that the County's practice violates Article XII of the parties' agreement.

The grievance was not resolved. 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 cannot consider the merits of the grievance or any contractual defenses the employer may have.

The scope of negotiations for police officers and firefighters is broader than for other employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these negotiability tests:

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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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.

[87 N.J. at 92-93; citations omitted]

The County asserts that it reassigned the officer because of staffing needs and its goal of matching the best qualified employee to a particular job function. It further asserts that the reassignment was within its managerial prerogative to determine staffing levels and assignments, and its contractual authority under the Management Rights and Work Hours clauses.

The PBA contends that the reassignment was disciplinary and resulted in a reduction in the officer's compensation. It relies on Borough of Dumont, P.E.R.C. No. 98-111, 24 NJPER 168 (¶29083 1998), in which we denied the employer's request for a restraint of binding arbitration when it reassigned an officer and reduced his salary. The PBA also contends that the reassignment was a demotion. Lastly, the PBA argues that the reason for the reassignment and whether it constitutes a demotion are matters that should be heard by an arbitrator.

The County replies that the facts in this case are distinguishable from Dumont. The County asserts that in Dumont, the employer conceded that the reassignment of the officer would be arbitrable if it were disciplinary, and we relied on that concession in declining to restrain arbitration. It further asserts that in Dumont, the union submitted a certification from the transferred officer to support its contention that the reassignment was disciplinary, and the employer did not submit a

reply. The County contends that in this case, the PBA has not asserted any facts to indicate that the reassignment was for disciplinary reasons. Lastly, the County responds that Union Cty. Sheriff, P.E.R.C. No. 2003-2, 28 NJPER 303 (¶33113 2002), rather than Dumont, controls this case. We agree.

In Union Cty. Sheriff, relying on our holding in Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998), we held that the discipline amendment to N.J.S.A. 34:13A-5.3, as enacted in 1982 and as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993), did not apply to any disciplinary disputes involving police officers.^{2/} A 1996 amendment to section 5.3 authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments of police officers. Police officers who believe that they have been unjustly reassigned as a form of discipline must file a Superior Court action in lieu of prerogative writ. Monmouth Cty. v. CWA, 300 N.J. Super. 272, 289 (App. Div. 1997);^{3/} see also City of Trenton, P.E.R.C. No. 2005-59, 31 NJPER 58 (¶27 2005); City of Trenton, P.E.R.C. No. 2004-52, 30 NJPER 70

^{2/} Dumont was issued before New Milford and accepted the employer's concession for purposes of that decision that a disciplinary reassignment would be legally arbitrable. New Milford considered that issue fully and rejected that position.

^{3/} No severable negotiable procedural issues have been identified.

(¶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).

Absent any reason to distinguish our case law, we grant the City's request for a restraint of binding arbitration.

ORDER

The request of the County of Hudson for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioners Colligan and Fuller recused themselves.

ISSUED: February 25, 2010

Trenton, New Jersey