

P.E.R.C. NO. 2010-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Petitioner,

-and-

Docket No. SN-2009-051

PATROLMEN'S BENEVOLENT ASSOCIATION  
UNION COUNTY CORRECTION OFFICERS  
LOCAL NO. 199, INC.

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the County of Union's request for a restraint of binding arbitration of a grievance filed by the Patrolmen's Benevolent Association Union County Correction Officers Local No. 199, Inc. The grievance asserts that the County violated the parties' collective negotiations agreement when it reassigned corrections officers from their normal assignments to fill vacant posts rather than call-in qualified officers to perform those duties on an overtime basis. The Commission denies the County's request for a restraint to the extent the grievance involves changes in work hours. The Commission grants the restraint to the extent the grievance concerns temporary reassignments within a job classification and job description and does not involve a change in work hours.

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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UNION COUNTY CORRECTION OFFICERS  
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Respondent.

Appearances:

For the Petitioner, Bauch Zucker Hatfield, LLC,  
attorneys (Kathryn V. Hatfield, on the brief)

For the Respondent, Mets Schiro & McGovern, LLP,  
attorneys (James M. Mets, on the brief)

DECISION

On February 13, 2009, the County of Union petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by Patrolmen's Benevolent Association, Union County Correction Officers, Local No. 199, Inc. The grievance asserts that the County violated the parties' collective negotiations agreement when it reassigned correction officers from their normal assignments to fill vacant posts rather than call in qualified officers to perform those duties on an overtime basis. We partially grant the employer's request for a restraint.

The parties have filed briefs and exhibits. The County has filed the certification of its Corrections Department Director. These facts appear.

The PBA represents all correction officers below the rank of sergeant. The parties entered into a collective negotiations agreement effective from January 1, 2005 through December 31, 2009. The grievance procedure ends in binding arbitration.

The parties' contract contains a Management Rights clause (Article 3) and provisions addressing Seniority (Article 13), Overtime (Article 14), and Retention of Benefits (Article 23). Article 13, Section 3 provides that:

Seniority shall be the basis upon which employees shall select vacation schedules, shifts, posts, days off and overtime except in circumstances where the granting of the above will interfere with the efficient operations of the Union County Jail facilities.

In 2008, the County established a new shift assignment called "Supplemental Relief Post" (SRP). It did so to cut overtime costs by having a group of correction officers available to fill temporarily vacant posts caused by leaves or other reasons. An SRP assignment allows the County to cover the vacancy without having to use an off-duty officer at overtime rates.

Between January 1, 2008 and February 2009, the County hired a total of 69 correction officers. Each new correction officer

was required to complete 560 hours of training by the Police Training Commission to become qualified to fill all the assignments performed by correction officers represented by the PBA. According to the PBA, when this grievance arose, only the January 2008 class of officers had been fully trained.

Some correction officer assignments cannot be covered by less than fully-trained officers. "Booking and Releasing" is such a post.

In July 2008, an officer assigned to Booking and Releasing was absent. No SRP with the requisite training was available. To cover the vacancy, an experienced, fully-trained officer was reassigned from his normal post to the Booking and Releasing post. This officer had chosen his assignment and work hours through the contractual bidding procedure that takes place before the start of each calendar year. An SRP was assigned to the non-specialized post that the reassigned officer had been working. Similar personnel shifts occurred on subsequent occasions.

In August 2008, the PBA filed a grievance asserting that the reassignments violated the seniority provisions of the agreement, particularly those pertaining to shift bidding and the distribution of overtime by seniority in accordance with past practice. The Director denied the grievance asserting that the employer had the right to move officers between any posts with duties within their job descriptions. The grievance was then

denied by the County Manager and the PBA sought 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 contractual 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 public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). 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:

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]

Because this case involves a grievance, arbitration is permitted if its subject 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).

The County asserts that it had a prerogative to move the non-SRP officers into the vacancies because the duties they were assigned to perform were within their job descriptions. Making these changes allowed the County to place SRP officers into positions they were qualified to perform. The County contends that the issue is not overtime, but rather its prerogative to assign employees to jobs for which they are qualified. The County's reply brief argues that the prerogative includes its

right to temporarily change the shift of a correction officer because an SRP did not have the training necessary to substitute for a particular correction officer.

The PBA contends that the employer has used the SRP officers to circumvent the express provisions of the contract concerning shift bidding and overtime opportunities.

In City of Camden, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), recon. den. P.E.R.C. No. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd 27 NJPER 357 (¶32128 App. Div. 2001), we discussed the interplay between shift bidding and assignments. The PBA had proposed shift and post bidding for correction officers that would affect both work hours and assignments. The proposal therefore implicated two principles articulated in our case law. The first principle is that public employers and majority representatives may agree that seniority can be a factor in shift selection where all qualifications are equal and managerial prerogatives are not otherwise compromised. See, e.g., City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990); contrast Borough of Highland Park, P.E.R.C. No. 95-22, 20 NJPER 390 (¶25196 1994) (clauses that base shift selection solely on seniority are not mandatorily negotiable). The second principle is that public employers have a non-negotiable prerogative to

assign employees to particular jobs 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. Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996).

Under this case law, to the extent the PBA's grievance involves situations where employees had their shifts changed to avoid the need to fill posts on an overtime basis, the grievance involves a mandatorily negotiable subject that can be submitted to binding arbitration. To the extent the PBA's grievance involves only a change in assignment within a shift to avoid overtime costs and to assign regularly scheduled correction officers to positions for which they are qualified, the subject of the grievance predominately involves the managerial prerogative to assign duties within a shift and within a job description.

However, because this grievance involves police within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., who may enforce agreements over permissive subjects of negotiation, we must ask an additional question. If the parties have agreed that employees who have bid for particular posts should not be reassigned, would it substantially limit governmental policy to permit the PBA to enforce that agreement when the reason for deviating from the



alleged agreement was to avoid overtime costs and to be able to assign SRPs to positions for which they are qualified. We think the answer is yes and will restrain arbitration to the extent the grievance concerns temporary reassignments within a job classification and job description and does not involve a change in work hours.

The employee's interest in working the post he or she bid for is real, but to permit arbitration would unduly restrict the employer's ability to assign duties to those best qualified to perform them within their regular work hours. At the time of these reassignments, not all SRPs had been fully trained. Some were not yet qualified to perform all duties within their job classification and the temporary reassignments permitted everyone to perform duties for which they were qualified.

ORDER

The County's request for a restraint of binding arbitration is denied to the extent the grievance involves changes in work hours and granted to the extent it involves temporary reassignments within regularly assigned work hours.

BY ORDER OF THE COMMISSION

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

ISSUED: October 29, 2009

Trenton, New Jersey