

P.E.R.C. NO. 2010-91

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY PROSECUTOR'S OFFICE,

Petitioner,

-and-

Docket No. SN-2010-030

DETECTIVES AND INVESTIGATORS  
ASSOCIATION OF UNION COUNTY,  
PBA LOCAL 250,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the Union County Prosecutor's Office's request for a restraint of binding arbitration of a grievance filed by the Detectives and Investigators Association of Union County, PBA Local 250. The grievance contests a detective's loss of the use of a County vehicle and seeks offsetting compensation for the loss. The Commission restrains arbitration to the extent the grievance seeks reassignment of a vehicle and denies the request on the offsetting compensation issue.

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, Bauch Zucker Hatfield, LLC,  
attorneys (Kathryn V. Hatfield and Evan M. Lison, of  
counsel and on the brief)

For the Respondent, Mets Schiro & McGovern, LLP,  
attorneys (James M. Mets, of counsel and on the brief;  
Brian J. Manetta, on the brief)

DECISION

On October 19, 2009, the Union County Prosecutor's Office petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Detectives and Investigators Association of Union County, PBA Local 250. The grievance contests a detective's loss of the use of a County vehicle. We restrain arbitration to the extent the grievance seeks reassignment of a vehicle, but not over the claim for offsetting compensation.

The parties have filed briefs and exhibits. The County has filed certifications from Prosecutor Theodore J. Romankow and

Assistant Prosecutor Albert Cernadas, Jr. The PBA has filed a certification from its president, Stephen E. McGuire. These facts appear.

PBA Local 240 represents detectives, investigators, and investigator accountants who do not hold a superior rank. The Prosecutor and PBA are parties to a collective negotiations agreement effective from January 1, 2005 through December 31, 2009. The grievance procedure ends in binding arbitration. Article XXI is a Retention of Existing Benefits clause.

Detective Robert Meoqui has been employed by the Prosecutor's Office since June 2004. At the time of his hire, Meoqui was advised that he might be provided with a Union County Prosecutor's Office vehicle for business-related purposes, but in no way was the vehicle to be viewed as a term and condition of his employment. Meoqui also received a copy of the Manual of Administrative Policies and Procedures for Members of the Union County Prosecutor's Office.

Section 3:10 of the manual provides in part:

3:10-1      General Statement - The assignment of a county vehicle shall be within the sole discretion of the Prosecutor. As a general and guiding principle, the issuance of a county vehicle shall be related to a specific task or assignment within the Office. The vehicle is considered a tool to be utilized to carry out those tasks. The Prosecutor shall determine from time to time, after consultation

with senior staff, the number of county vehicles and the assignment of those vehicles that are requisite to carry out the mission of the Office.

3:10-2 Use of County Vehicles - Vehicles are to be used for work related purposes only. A county vehicle should not be used except when:

- (a) "on call" 24 hours a day, seven days a week by designation of the Prosecutor, First Assistant Prosecutor or Chief of Investigations;
- (b) "on call" for a particular time period by designation of the Prosecutor, First Assistant Prosecutor or Chief of Investigations, or by a specific "on call" roster;
- (c) attending conferences, meetings, speaking engagements, etc., which are related to the employee's duties;
- (d) no county vehicle may be operated outside of the State of New Jersey without the permission of the Prosecutor, First Assistant Prosecutor or the Chief of Investigations.

On June 17, 2009, Meoqui sent the following memorandum to Romankow:

Recently I was assigned to the Grand Jury Unit; as a result I turned over my old assigned County vehicle to Detective Paul Han, who replaced me at the IRS Task Force. During the course of my assigned duties I frequently use a county vehicle. I am respectfully requesting the assignment of another County vehicle for official use.

Thank you for your consideration of this matter.

On July 6, 2009, Romankow denied the request. On July 21, the PBA filed a grievance alleging a violation of Article XXI. According to the PBA, detectives engaged in investigative functions are permitted to commute to work in County vehicles. A grievance hearing was held on July 28 and a decision denying the grievance was issued on August 6. On August 7, the PBA presented the grievance to Romankow. The grievance was not resolved and on August 26, the PBA filed for binding 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.

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. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), permits arbitration 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 preemption issue is presented.

The Prosecutor asserts that the deployment of County vehicles is a managerial prerogative. It cites Morris Cty. and Morris Cty. Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984), where we held that the decision to allow employees to use employer-owned vehicles for commuting purposes is not mandatorily negotiable, but that the employer was required to negotiate over offsetting compensation for the economic loss suffered by its employees. The Prosecutor further asserts that a compensation claim is not presented in the grievance.

The PBA responds that Meoqui lost a tangible economic benefit when the County denied him use of the vehicle because he must now use his personal vehicle for commutation purposes. It cites Union County Prosecutor, P.E.R.C. No. 2000-64, 26 NJPER 106 (¶31043 2000), where we held in a case with the same parties that

the PBA could arbitrate the economic loss aspect of a grievance contesting the decision to strip a detective of his County vehicle.

The Prosecutor replies that the PBA has not asserted any facts to establish that Meoqui's use of a County vehicle amounted to an economic benefit and that an employer cannot be expected to automatically negotiate each time it transfers an employee from an assignment that requires a vehicle to one that does not. He distinguishes Union County Prosecutor because in that case, the PBA alleged that the use of the vehicle was an economic incentive for the detective to accept initial employment whereas here the PBA does allege facts that Meoqui's vehicle use became an economic benefit.

The Prosecutor has a managerial prerogative to assign County vehicles. Ibid. We restrain arbitration to the extent the grievance seeks assignment of a County vehicle. The PBA may arbitrate its claim that Meoqui lost an economic benefit when the Prosecutor declined to assign him a vehicle. Whether that claim is encompassed in the grievance or has any merit are questions for the arbitrator outside our scope of negotiations jurisdiction. Ridgefield Park.

#### ORDER

The Union County Prosecutor's request for a restraint of binding arbitration is granted to the extent the grievance seeks

reassignment of a vehicle to Meoqui. The request is denied to the extent the grievance seeks offsetting compensation.

BY ORDER OF THE COMMISSION

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

ISSUED: June 24, 2010

Trenton, New Jersey