

P.E.R.C. NO. 2012-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Petitioner,

-and-

Docket No. SN-2011-048

PBA LOCAL 249,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the County of Burlington's request for a restraint of binding arbitration of a grievance filed by PBA Local 249. The grievance alleges that the County violated the parties' collective negotiations agreement when the Warden closed the Money Room post and transferred the duties of the post to Control Room 9 without assigning the duties of Money Room Officer to the most senior qualified officer after the transfer. The Commission restrains arbitration to the extent the grievance challenges the decision to eliminate the Money Room post and permits arbitration over the PBA's allegation that the seniority provision of the parties' contract was violated when the post that assumed the Money Room duties was not bid.

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, Capehart Scatchard, P.A., attorneys
(Alan R. Schmoll, of counsel; Kelly Estevam, on the
briefs)

For the Respondent, Mets Schiro & McGovern, LLP,
attorneys (Kevin P. McGovern, of counsel)

DECISION

On January 10, 2011, the County of Burlington petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by PBA Local 249. The grievance alleges that the County violated the parties' collective negotiations agreement when the Warden failed and/or refused to assign the duties of Money Room Officer to the most senior qualified officer at the Burlington County Detention Center. We restrain arbitration of any challenge to the elimination of the Money Room post or claim that the County was obligated to negotiate with the PBA before eliminating that

assignment. We permit arbitration over the PBA's allegation that the seniority provision of the parties' contract was violated.

The parties have filed briefs. The County has also filed exhibits. These facts appear.

The PBA represents correction officers and I.D. officers employed by the County. The parties' most recent agreement has a duration from January 1, 2005 through December 31, 2008. The grievance procedure ends in binding arbitration. Article I is a Recognition Clause. Article XIX is entitled Work Rules and Article XIII is a Seniority provision. Paragraph D of Article XIII provides:

All new assignments and vacant assignments which the County seeks to fill shall be posted for bid at the County's various correctional facilities for a minimum of seven (7) working days. The bid sheet shall state facility, shift, and days off as well as any special requirements for the assignments. The position shall be filled with the most senior employee who bids on the assignment and who has the minimum qualifications to perform the job. An employee shall not be permitted more than two (2) bids per year.

Included in Article XIII is a list of posts to be bid that includes the Money Room.

On August 12, 2010, the Administrator/Warden sent a memorandum to staff advising that the Administrative Control Booth (Money Room) would be closed effective August 23. The duties of the Money Room officer were transferred to officers

assigned to Control Room 9. The officers previously assigned to the Money Room post were required to train the Control Room 9 officers as to their former duties for one week. Upon completion of the training, those officers previously assigned to the Money Room would be available for general assignment and staffing levels would be reduced by one officer.

The PBA filed a grievance in response to the Warden's memorandum. On August 30, 2010, Joseph J. Doherty, Contract Referee, issued a Step two decision denying the grievance. He ruled that the decision to re-assign job functions that are within the normal responsibilities of a correction officer is a managerial prerogative. On November 22, 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.

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 County asserts that it has a managerial prerogative to eliminate the Money Room post and reassign its duties to other correction officer posts. The PBA responds that it is not challenging the decision to close the Money Room or to re-assign the duties to Control Room 9. It asserts that it is challenging the County's failure to allow the officers to bid for the Control 9 posts once the Money Room was closed.

The County is correct, and the PBA does not dispute, that the County has a managerial prerogative to close the Money Room and re-assign the duties to another post. Thus, we restrain arbitration over any challenge to the County's prerogatives to abolish positions and transfer duties. See City of Asbury Park, 29 NJPER 32 (¶11 2003); Old Bridge Tp. Bd. of Ed., P.E.R.C. No.

86-113, 12 NJPER 360 (¶17136 1986), aff'd NJPER Supp.2d 171 (¶151 App. Div. 1987), certif. den. 108 N.J. 665 (1987).

The question that we must consider is whether the parties could have legally agreed to allow correction officers to bid for the Control 9 posts after it assumed the former Money Room duties. 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).

The parties have not provided any facts that would require a shift bidding analysis. This case involves the second part of Camden - seniority bidding for assignments. We do not find that permitting the grievance to go to arbitration would significantly interfere with the County's policymaking power. The County has not provided us with any certifications or facts to assert that there are any special qualifications or circumstances required that would prevent a seniority bidding process for the Control Room 9 posts. Here, the officers seeking to bid on the posts have prior experience in performing the duties now associated with those positions. Thus, the seniority bidding aspect of the grievance is mandatorily negotiable and legally arbitrable.

The cases relied upon by the County involve re-assignments of job functions where the contracts did not contain a seniority bidding process. See Caldwell-West Caldwell, P.E.R.C. 87-137, 13 NJPER 360 (¶18148 1987); Old Bridge Tp. Bd. of Ed. The County's argument that seniority bidding only applies to vacant positions involves the merits of the grievance outside our scope of negotiations jurisdiction. Ridgefield Park.

ORDER

The request of the County of Burlington for a restraint of binding arbitration is granted to the extent the grievance challenges the elimination of the Money Room post or claim that the County was obligated to negotiate with the PBA before eliminating that assignment. We permit arbitration over the PBA's allegation that the seniority provision of the parties' contract was violated.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Jones, Krengel and Voos voted in favor of this decision. Commissioners Eskilson and Wall recused themselves.

ISSUED: November 22, 2011

Trenton, New Jersey