

P.E.R.C. NO. 2013-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF VINELAND,

Petitioner,

-and-

Docket No. SN-2010-095

PBA LOCAL 266,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Vineland for a restraint of binding arbitration of a grievance filed by PBA Local 266. The grievance contests the City's decision to limit overtime incurred from a grant assignment to detectives in the Juvenile Bureau. The Commission holds that permitting an arbitrator to second-guess the Chief's determination that the juvenile officers were most qualified to administer the grant concerning curfew intervention services would substantially limit the employer's managerial prerogative to match the best qualified employees to the particular job.

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, Buonadonna & Benson, attorneys
(Michael E. Benson, of counsel)

For the Respondent, Alterman & Associates, LLC,
attorneys (Christopher A. Gray, of counsel)

DECISION

On May 21, 2010, the City of Vineland petitioned for a scope of negotiations determination.^{1/} The City seeks a restraint of binding arbitration of a grievance filed by PBA Local 266. The grievance contests the City's decision to limit overtime incurred from a grant assignment to detectives in the juvenile bureau. We restrain arbitration.

The parties have filed briefs. The City has filed the certification of Police Chief Timothy Codispoli and exhibits. The following facts appear.

^{1/} This matter was placed on hold while the parties attempted to settle the grievance.

The PBA represents all rank and file police officers. The City and PBA are parties to a collective negotiations agreement with a duration from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration.

Article 3 is a Management Rights provision. Article 23 is entitled Overtime and provides in section 4:

Mandatory overtime shall be assigned as determined by the Chief of Police or designee. Other overtime shall be first made available to off-duty employees from the shift that is short. If no off-duty employee is available, then the overtime shall be offered to other employees. Overtime shall be assigned based on a rotating schedule to equalize the opportunity for overtime for all employees. The Police Department shall keep records of such assignments, and the records shall be available for employees to examine in the event a conflict or question should arise. Nothing herein shall preclude the assignment of overtime to a specific employee whose special skill or qualification is necessary.

Detective on-call status shall be eliminated. Detectives will be called in voluntarily, from most senior to least senior, then mandatorily least senior to most senior.

Section 5 provides that extra duty jobs derived from grants or programs shall be paid in accordance with the grant or program. Officers shall be paid at the overtime rate if the grant program requires such payment.

The police department through its Detective Division sought approval by the New Jersey Division of Criminal Justice to participate in a Community Justice Grant to provide curfew intervention project services. The grant was administered through Cumberland County. On July 1, 2009, the City and County entered into a shared services agreement with the Cumberland County Prosecutor's Office with a scheduled end date of September 30. The project was new and encompassed curfew intervention where assigned officers would focus their efforts into interacting with curfew offenders, providing referrals to intervention programs, and following-up with guardians regarding curfew violations and referrals. The City was required to report on the success of the program.

The Chief of Police initially determined that given the nature of the project, it should be staffed by detectives from the Juvenile Unit who had skills and experience in dealing with juvenile offenders. To the extent the project funds paid overtime, the overtime was paid to the juvenile detectives who were assigned to the project. Eventually, the Chief opened the project to other officers, but retained two juvenile detectives throughout the program.

The PBA filed a grievance asserting that only assigning juvenile detectives to the program denied other officers overtime opportunities in violation of the parties' agreement. The

grievance was denied. On April 15, 2010, the PBA demanded 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.

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 City asserts it has a non-negotiable managerial prerogative to permit the Chief to determine the most qualified

officers to carry out the purpose of the grant program. The Chief determined that the goals and purpose of the grant, as well as the health, safety and welfare of the residents, and the youth to be served by the project, could best and most efficiently be implemented by assigning detectives from the Juvenile Unit. To require other officers to work on the program would significantly interfere with the Chief's determination. The Chief asserts that any overtime involved was incidental to the assignment of the juvenile detectives.

The PBA responds that by deciding to assign the overtime details to juvenile detectives only, the City negatively affected the mandatorily negotiable overtime rates, and thus the rates of pay and hours worked of officers in other divisions. It asserts the dominant concern here is the assignment of overtime to employees in violation of the parties' agreement. The PBA disputes that the grant position requires specialized skills or qualifications.

Where receipt of additional compensation is directly tied to an assignment to a particular position, the dominant issue is the employer's non-negotiable prerogative to assign employees 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).

This prerogative trumps a claim that the assignment must be made on the basis of seniority or other process. See New Jersey Transit, P.E.R.C. No. 2006-36, 31 NJPER 358 (¶143 2005).

Seniority may be a negotiated tie-breaking factor only when the employer has determined that all qualifications are equal and when managerial prerogatives are not otherwise compromised. See Edison Tp., P.E.R.C. No. 98-14, 23 NJPER 487 (¶28235 1997).

The City determined that the juvenile detectives are the most qualified officers to administer the grant objectives. Permitting an arbitrator to second-guess that determination would substantially limit the employer's prerogative to match the best qualified employees to the particular job. City of Elizabeth, P.E.R.C. No. 2007-11, 32 NJPER 309 (¶128 2006).

ORDER

The request of the City of Vineland for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Wall recused himself.

ISSUED: November 19, 2012

Trenton, New Jersey