

P.E.R.C. NO. 2014-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2013-037

PBA LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Trenton for a restraint of binding arbitration of a grievance filed by PBA Local 11. The grievance asserts that the City violated the seniority preference clause of the collective negotiations agreement by reassigning two officers from the Vice section to other sections. The Commission holds that where no issue of special qualifications is present, or where the employer has not shown how governmental policy would be impeded, grievances asserting that seniority should govern shift reassignments are legally arbitrable.

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.

P.E.R.C. NO. 2014-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2013-037

PBA LOCAL 11,

Respondent.

Appearances:

For the Petitioner, Ruderman & Glickman, P.C.,  
attorneys (Steven S. Glickman, on the brief); Becker  
Meisel LLC, attorneys (Wes Bridges, of counsel)

For the Respondent, Kroll Heineman Carton, LLC (Raymond  
G. Heineman, of counsel)

DECISION

On January 7, 2013, the City of Trenton filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by PBA Local 11 (PBA). The grievance asserts that the City violated the seniority preference clause of the parties' collective negotiations agreement (CNA) by reassigning two police officers from the Vice section to other sections.

At the start of the April 30, 2013 arbitration hearing, the PBA withdrew its grievance on behalf of one of the two grievants. Therefore this scope petition is moot with regard to that grievant, but proceeds regarding the other grievant.

The parties have filed briefs and exhibits. The PBA submitted the certification of PBA President George Dzurkoc. The City did not submit a certification.<sup>1/</sup> These facts appear.

The PBA represents all uniformed and non-uniformed police officers and police officer detectives of the City's Police Department. The PBA and the City are parties to a CNA effective from January 1, 2006 through December 31, 2010. The grievance procedure ends in binding arbitration.

Article VII of the CNA is entitled "Hours of Employment". Section 7.02(a) provides, in relevant part:

Each officer will be assigned a set shift, and will not be rotated through different shifts. The number of officers assigned to each shift will be at the City's discretion. For the initial assignment of members, and for reassignments as vacancies occur, consideration will be given to the shift preferences of individual members based on seniority to the extent practical, but the City will have the final authority to make such assignments to ensure the efficient and effective operation of the Department.

Article XIX of the CNA is entitled "Management of City's Affairs". Section 19.01 provides, in pertinent part:

The employer shall have the right, subject to the terms herein contained, to hire employees, to classify, assign, transfer and promote them...

Section 19.02 provides, in pertinent part:

---

<sup>1/</sup> N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

The City agrees that the principles of seniority shall apply to employees covered by this Agreement; layoffs shall be in inverse order of seniority, and employees shall be reinstated according to seniority.

Dzurkoc certified that the grievant is a senior police officer who was assigned to the department's Vice Unit until October 22, 2012, when he was reassigned from Vice to Patrol Operations. The grievant lost his detective stipend due to the transfer, and was changed from the eight-hour day shift 5-2 special operations schedule to the ten-hour "4 on 4 off" patrol operations schedule. Dzurkoc certified that the grievant was not replaced in the Vice unit and no rationale was given for the reassignment order.

On October 24, 2012, the PBA filed a step 1 and step 2 grievance asserting, in pertinent part:

On Monday October 22, 2012 you issued Personnel Classification Order 2012-111 transferring [Grievant] from the Vice-Enforcement Unit....This transfer has resulted in a substantial loss of salary.

On October 25, 2012, the PBA demanded binding arbitration. This petition ensued.

The arbitrator framed the issue as: "Did the City of Trenton violate the CBA (Articles 4.02, 7.02, 9.02 & 19.01) by transferring [Grievant] from Vice to Patrol? If so, what shall be the remedy?" On July 31, 2013, the arbitrator issued an award

sustaining the grievance and ordering the City to reassign the grievant to Vice Unit with back pay.<sup>2/</sup>

Our jurisdiction does not include reviewing the merits of a grievance or an arbitration award. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). In a post-arbitration award setting, we decide only whether the arbitration award involved a subject that is legally arbitrable.

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, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

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

---

<sup>2/</sup> The City was also ordered to comply with the procedural just cause provisions of Section 4.02 of the CNA, because the City argued to the arbitrator that grievant's reassignment was due to a recommendation from the Prosecutor's office that he posed a risk to the department's integrity, and the PBA responded that the reassignment was therefore disciplinary and the City violated the CNA's disciplinary procedures. Neither the City nor the PBA made any arguments or assertions in their submissions to the Commission that grievant's reassignment was disciplinary or that disciplinary procedures were violated. Accordingly, such assertions made to the arbitrator are not considered by the Commission in its scope of negotiations determination.

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.

Arbitration is permitted if the subject of the grievance 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). Thus, if we conclude that the PBA's grievance is either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The City argues that the grievance raises the issue of the negotiability of transfers or reassignments. It asserts that the decision to transfer or reassign a public employee is a policy determination that is not mandatorily negotiable. (Citing New

Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30003 1998); City of Orange Township, P.E.R.C. No. 2007-59, 33 NJPER 115 (¶40 2007); and UMDNJ, P.E.R.C. No. 2011-79, 37 NJPER 203 (¶64 2011)).

The PBA argues that the Commission has held that seniority assignment contract clauses are negotiable where the contract sufficiently reserves management's right to deviate from seniority where qualifications and skill dictate. (Citing Maple Shade, P.E.R.C. No. 2012-072, 39 NJPER 61 (¶25 2012)). It asserts that the seniority assignment clause in Article XIX was previously found negotiable in City of Trenton, P.E.R.C. No. 2007-61, 33 NJPER 118 (¶42 2007). The PBA contends that the City has not presented any evidence or arguments regarding why the grievants' assignments were changed; therefore it has failed to demonstrate how arbitration would interfere with a managerial policy decision. Finally, the PBA argues that the City's reliance on City of Orange Township is misplaced because the grievant in that case alleged improper motive for her reassignment. The PBA asserts that, in the instant case, it is not arbitrating motive, but only the issue of whether the City violated the CNA by making reassignments without any consideration of seniority or employee preference.

As set forth above, the City has not filed a certification in this matter. There are no facts in the record as to why the grievant was transferred from Vice to Patrol Operations.

Although the City argues that the transfer of the grievant was a policy determination that is not mandatorily negotiable, we have held in the past that where no issue of special qualifications is present, or where the employer has not shown how governmental policy would be impeded, grievances asserting that seniority should govern shift reassignments or transfers are legally arbitrable. See Bedminster Tp., P.E.R.C. No. 2013-94, 40 NJPER 72 (¶28 2013); Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998); Town of Phillipsburg, P.E.R.C. No. 89-30, 14 NJPER 640 (¶19268 1988).

ORDER

The request of the City of Trenton for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Jones voted in favor of this decision. None opposed. Commissioner Wall recused himself. Commissioner Voos was not present.

ISSUED: September 26, 2013

Trenton, New Jersey