

P.E.R.C. NO. 2016-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-2015-064

PBA LOCAL 108,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Union County Sheriff's Office's request for a restraint of binding arbitration of a grievance filed by PBA Local No. 108. The grievance contests the Sheriff's new policy requiring a two-year commitment for officers serving in biddable posts in the Bureau of Criminal Identification (BCI). The Commission finds that the Sheriff has not demonstrated a particularized governmental policy need to deviate from an alleged contractual shift/assignment bidding clause, and therefore binding arbitration of whether the two-year minimum service requirement for the BCI post violates the contract will not inevitably significantly interfere with the Sheriff's policymaking prerogatives.

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 (Elizabeth Farley Murphy, of counsel)

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

DECISION

On March 30, 2015, the Union County Sheriff (Sheriff) filed a scope of negotiations petition seeking to restrain arbitration of a grievance filed by PBA Local 108 (Local 108). The grievance alleges that the Sheriff violated the parties' collective negotiations agreement's seniority shift bidding clause by instituting a two-year commitment for officers serving in a biddable post in the Bureau of Criminal Identification (BCI).

The Sheriff filed briefs, exhibits, and the certifications of Lieutenant George Valladares. Local 108 filed a brief and the certification of Sergeant Tara Halpin. These facts appear.

Local 108 represents Sheriff's Officers and Investigators employed by the Sheriff. The Sheriff and Local 108 are parties to a CNA in effect from January 1, 2005 through December 31, 2009, which was modified by an interest arbitration award (Award) for the term January 1, 2010 through December 31, 2014. The grievance procedure ends in binding arbitration.

The Award modified Article X, Hours of Work, of the CNA to add the following provision:

The parties recognize that certain posts may require special skills. The Sheriff or his designee shall have sole discretion in deciding which posts require special skills. All posts not requiring special skills shall be annually posted for bid in November for the subsequent calendar year. Employees shall be permitted to bid on positions and work shifts based upon departmental seniority. The Sheriff or his designee shall retain the authority to reassign employees from their bidded position for training purposes or to cover a vacant shift.

On July 19, 2012, the Commission denied the Sheriff's appeal of the Award, including the Sheriff's objection to the awarded language of Article X. We stated:

We affirm this aspect of the award. The arbitrator did not award the PBA's seniority proposal. Rather, she added the requirement that the employer retain the sole discretion to determine which posts require special skills. She balanced the interest and welfare of the public, continuity and stability of employment; and the impact on the governing unit to craft her award. Further, the record indicates that there is an informal shift bidding in place when officer's present their top choices for

assignment to the sheriff....Here, the scenarios presented by the County in objection to the awarded language are exercises of its managerial prerogatives which our precedent protects in shift bidding disputes. If the Sheriff determines that a particular officer is required and qualified for any assignment, that is within his sole discretion.

County of Union and PBA Local No. 108, P.E.R.C. No. 2013-4, 39 NJPER 83 (¶32 2012), aff'd 40 NJPER 453 (¶158 2014)]

On November 7, 2014, the BCI was divided into two units: (1) a BCI, which would continue to conduct criminal identification and investigatory duties involved in processing arrestees such as fingerprinting, taking mug shots, conducting lineups, and performing background checks; and (2) a Crime Scene Unit, which would conduct crime scene investigations. (Valladares certification, ¶5, 6; Halpin certification, ¶22, 23). Sheriff Joseph Cryan determined that the new BCI unit, without crime scene responsibilities, could be included in the post and shift bidding process along with the Courts, Prisoner Transportation, Sheriff's Labor Assistance Program, Courthouse Security, Park Madison, Plainfield Probation, and Legal Process units. (Valladares certification, ¶4, 7). The 2014 bid sheets (for 2015 post/shift selection) allowed the aforementioned units, along with the new BCI unit, to be bid on in order of preference from one through three. (Sheriff Exhibit G). None of these biddable posts required a minimum commitment except for BCI, which

specified a "minimum two-year commitment". (Id.; Halpin certification, ¶26). Separate from that bidding process was the selection process for the Search and Rescue Unit and the new Crime Scene Unit, which the bid sheet classified as "specialized units" subject to a tryout period, unit commander approval, and a minimum three-year commitment. Id.; (Halpin certification, ¶24, 25).

Valladares certifies that although biddable, the BCI's work continues to require specialized training, which consists of an eight-day fingerprinting analysis class offered annually supplemented by extensive on-the-job training. Valladares further certifies that the two-year service commitment was imposed because this training "is vital for the unit to operate properly." As he explained, "Because the service commitment is required, two out of the four officers in the unit will be precluded from bidding out of the unit each year to ensure that trained, experienced officers are always present and are not replaced by four untrained, inexperienced officers."

In her certification, Halpin maintains that officers assigned to BCI in January 2015 were able to perform the necessary functions of the job even before taking the required eight-day fingerprinting course, which was not offered until Spring 2015. In reply, Valladares certifies that only one

officer received the course training in Spring 2015 because the other three were already trained.

On November 24, 2014, Local 108 filed a grievance alleging that the Sheriff violated Article X of the CNA and Award when it imposed the two-year commitment for officers bidding into BCI even though it had not been designated as a "specialized" unit. On December 10, the Sheriff denied the grievance. On December 10, Local 108 filed for binding grievance arbitration. This petition ensued.^{1/}

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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 Local 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

^{1/} On November 12, 2015, we denied Local 108's request for an evidentiary hearing.

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.

Arbitration is permitted if the subject of the grievance is mandatorily or permissively negotiable. Middletown Tp. and Middletown PBA, P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶1111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers. Paterson, 87 N.J. at 92-93. We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Sheriff asserts that arbitration over service commitments would significantly interfere with his ability to retain trained, experienced officers in BCI. Citing City of Elizabeth, P.E.R.C. No. 2000-15, 25 NJPER 407 (¶30177 1999), the Sheriff argues that he had a non-negotiable prerogative to impose the two-year service commitment in order to achieve its governmental policy goal of always having at least two trained and experienced officers in BCI at all times.

Local 108 asserts that the Commission has found that shift and post bidding are negotiable terms and conditions of employment and parties may agree that seniority can be a factor in shift selection where qualifications are equal and managerial prerogatives are not otherwise compromised. It argues that because the Sheriff has classified BCI as a "biddable" post and has not designated it as a "specialized" unit, then it is subject to the language of Article X, which the Commission already concluded preserves the Sheriff's managerial prerogative to assign the best qualified employees to particular jobs, to determine which posts require special skills, and to reassign employees from their bidded posts for training purposes or to cover a vacant shift.

In Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), clarified P.E.R.C. No. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd 27 NJPER 357 (¶32128 App. Div. 2001), we

reviewed the case law concerning shift bidding systems. Public employers and unions may agree that seniority can be a factor in shift assignments 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). However, 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. As we said in Camden, the interplay between these principles must be assessed case by case on the facts contained in the record and the arguments presented to us. 25 NJPER at 435; Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998); see also In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987).

Where public employers have demonstrated a particularized governmental policy need to deviate from contractual shift, platoon, or tour of duty/assignment bidding clauses, the Commission has restrained arbitration. See, e.g., Union Tp., P.E.R.C. No. 2003-81, 29 NJPER 214 (¶63 2003) (chief certified general qualifications and supervision problems, as well as specific problems with two officers, demonstrating need to

deviate from seniority-based bidding for supervisory platoon selection); City of New Brunswick, P.E.R.C. No. 2003-37, 28 NJPER 578 (¶33179 2002) (governmental policy decision to increase supervisory experience on either side of third shift justified deviation from assignment bidding clause resulting in supervisor being transferred); Rutherford Bor., P.E.R.C. No. 2008-23, 33 NJPER 260 (¶98 2007) (employer could deviate from assignment bidding clause where it demonstrated that the vast majority of officers and supervisors requested the day shift, which was impossible to grant, and that a mix of qualifications and experience was necessary for each shift); Elizabeth, supra (employer could deviate from seniority bidding process where it demonstrated need for special skills and characteristics to staff new community policing detail); Burlington Cty., P.E.R.C. No. 2000-70, 26 NJPER 121 (¶31052 2000) (employer could deviate from relief bidding system for assignments because it showed that locking up a significant number of specific job assignments required for training purposes would substantially limit its governmental policymaking powers).

On the other hand, the Commission has declined to restrain arbitration of grievances alleging deviation from shift or assignment/post bidding clauses where the public employer has failed to demonstrate a need for special skills, qualifications, or specific training or supervisory objectives and has not

otherwise shown how governmental policy would be significantly impeded by adhering to the alleged contractual seniority bid system. See, e.g., City of Trenton, P.E.R.C. No. 2014-18, 40 NJPER 202 (¶77 2013) (grievance contesting reassignment of officers from administration unit to operations unit in violation of seniority bidding clause was arbitrable where there was no issue of special qualifications, and the employer did not demonstrate how governmental policy would be impeded); City of Trenton P.E.R.C. No. 2014-19, 40 NJPER 204 (¶78 2013) (officers could arbitrate transfer from vice to patrol unit); Bedminster Tp., P.E.R.C. No. 2013-94, 40 NJPER 72 (¶28 2013); Burlington Cty., P.E.R.C. No. 2012-27, 38 NJPER 211 (¶73 2012) (officers could arbitrate failure to assign to Control 9 post based on seniority bidding for assignments where employer did not demonstrate an issue of special qualifications or how managerial prerogatives were significantly compromised); Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998) (officers could arbitrate transfer from Airport post to other post assignments in alleged violation of seniority shift bidding clause where employer did not demonstrate any qualifications issues or other managerial need to deviate from the shift/post bidding system).

In some cases, the Commission has found seniority bidding systems non-negotiable and non-arbitrable for particular posts,

while allowing negotiation and arbitration over seniority bidding for other posts. See Camden, supra (assignment bidding clause found not mandatorily negotiable regarding multiple positions for which employer demonstrated a need for special training, experience or other qualifications; however, clause found mandatorily negotiable for Record and Jury Management positions where record did not demonstrate employer's asserted experiential and training concerns); Paramus Bor., P.E.R.C. No. 2002-19, 28 NJPER 13 (¶33002 2001) (arbitration restrained over tour exchange policy regarding Juvenile unit assignments where employer demonstrated that it would result in a detective from Adult or BCI serving for a full tour in Juvenile without a detective regularly assigned to that section; however, grievance relating to detectives exchanging tours between BCI and Adult Bureaus was arbitrable where there was no showing of special qualifications or experiential concerns, and no showing that operations in either bureau were impaired).

Against this backdrop, and applying the requisite analysis, we find that allowing an arbitrator to answer the question presented by the Local's grievance - whether the two-year service commitment violates the CNA, as modified by the Award - will not inevitably interfere with the Sheriff's policymaking prerogatives to such a degree so as to compel a restraint. We acknowledge that the Sheriff has the non-negotiable prerogative, not

reviewable by an arbitrator, to require that BCI be comprised at all times by at least two trained and experienced officers. This is so even if that means a particular officer is not granted his preferred shift or post, whether by having to remain in BCI another year, or by not being admitted into the unit in a given year. We also recognize that this prerogative is imbued not only with considerations as to appropriate experience and training levels, but also minimum staffing needs. Nevertheless, the Sheriff has not presented evidence that the prerogative, or any of these considerations, was frustrated by the bidding that occurred in 2015. Nor, for that matter, has Local 108 alleged that a particular officer was not granted his preferred shift or post because of the BCI service commitment requirement.

Given the general nature of the record before us, we add that should a contract violation be found, the arbitrator's remedy must not impair the Sheriff's prerogative to meet the Office's staffing needs and other policymaking goals implicated in this matter.

ORDER

The request of the Union County Sheriff for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 19, 2015

Trenton, New Jersey