

P.E.R.C. NO. 2016-76

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OLD BRIDGE,

Petitioner,

-and-

Docket No. SN-2016-029

PBA LOCAL 127,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the request of the Township for a restraint of binding arbitration of a grievance filed by the PBA. The grievance contests an officer's transfer from the Detective Bureau to the Patrol Bureau. The Commission restrains that part of the grievance contesting the transfer finding that the Township has a managerial prerogative to transfer or reassign its employees. However, the Commission declines to restrain arbitration with respect to the claim that the grievant was contractually entitled to continue to receive additional pay.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Adam S. Abramson-Schneider, on the brief)

For the Respondent, Mets Schiro & McGovern, LLP, attorneys (Leonard C. Schiro, of counsel and on the brief)

DECISION

On November 16, 2015, the Township of Old Bridge (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 127 (PBA). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) and past practice by transferring the grievant from the Detective Bureau to the Patrol Bureau.

The Township filed a brief, exhibits, and the certification of its Chief of Police (Police Chief). The PBA filed a brief, exhibits, and the certification of its President (PBA President). The Township also filed a reply brief. These facts appear.

The PBA represents all patrol officers employed by the Township. The PBA and Township were parties to a CNA in effect from January 1, 2008 through December 31, 2013. The grievance procedure ends in binding arbitration.

Article VII, entitled "Overtime," provides in pertinent part:

D. Detective Bureau

1. All Patrol Officers assigned to the Detective Bureau shall be paid, above their respective base salary, an additional One Thousand Dollars (\$1,000) per year.

Article XXIV, entitled "Seniority," provides in pertinent part:

- D. For the purpose of a reduction in position, seniority in the position will take precedence.

On August 31, 2015, the Police Chief issued a memorandum that implemented two transfers effective September 4, 2015. In particular, the grievant was transferred from the Detective Bureau to the Patrol Bureau. The Police Chief certifies that the grievant was transferred in order to acclimate him to road/patrol procedures pending a promotion to sergeant.

The PBA President certifies that the grievant was "promoted to the position of Detective" and served in that position until September 2, 2015. At the time of his transfer, the grievant was the most senior detective in the Criminal/Juvenile Bureau. Since his transfer to the Patrol Bureau, the grievant has not received

training to become a sergeant nor has he received an appointment date on which he will be promoted.

On October 2, 2015, the PBA filed a grievance claiming that the Township violated the parties' CNA by transferring the grievant. In pertinent part, the grievance states:

Relevant Facts

. . .

While being the most senior Detective in the criminal/JV bureau, [the grievant] was reduced in rank without just cause and stripped of the \$1000.00 stipend for being on the 5/2 schedule. According to CNA article XXIV section D, "For the purpose of reduction in rank, seniority will take precedent", [the grievant] should not have been transferred, therefore violating said article.

On or about September 21, 2015, [another officer] was moved from the rank of patrol officer to the rank of Detective. On or about October 1, 2015, [the Police Chief] issued a department memorandum to all police Personnel requesting letters of interest for assignments within the Detective Bureau.

Remedy

Since there has not been a case for a Detective to be transferred prior to a promotion for re-acclimation and a senior Detective being reduced in rank without just cause, [the grievant] should immediately be reinstated as a Detective without loss of pay and seniority.

The Township denied the grievance at each step of the process.

On October 23, 2015, the PBA filed a Request for Submission of a Panel of Arbitrators (AR-2016-205) which claims:

The Township has violated the parties' collective bargaining agreement and past

practice by transferring [the grievant] from the Detective Bureau to the Patrol Bureau.

This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual 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, 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 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 a 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.

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 Township argues that reorganizational decisions relating to staffing, and substantive decisions to transfer or assign employees, are managerial prerogatives that are not subject to negotiation. Accordingly, the Township maintains that the Police Chief exercised his authority to reassign the grievant to the Patrol Unit based on his assessment of employee qualifications; specifically, that a detective should be acclimated to road/patrol procedures before being promoted to sergeant.

The PBA argues that reassignments which deviate from contractual seniority clauses and/or past practice may be enforced through arbitration absent a managerial need for the deviation. Here, where the Township's only argument is a claim that it has a managerial prerogative to transfer based upon employee qualifications without any demonstration that it has a need to do so, the PBA maintains that the subject grievance is arbitrable. The PBA also argues that the loss of an annual stipend is a severable issue that is mandatorily negotiable.

In reply, the Township argues that the seniority provisions within Article XXIV do not apply to this matter given that Article VII, Section D provides that Patrol Officers are assigned, not promoted, to the Detective Bureau.

The Supreme Court of New Jersey has held that "the substantive decision to transfer or reassign an employee is preeminently a policy determination" and "[t]he power of the

employer to make the policy decision would be significantly hampered by having to proceed through negotiation." Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982) (citing Ridgefield Park Ed. Ass'n, 78 N.J. at 156)); see also, City of Jersey City, P.E.R.C. No. 2006-31, 31 NJPER 349 (¶138 2005). We have often restrained arbitration over claims contesting the substantive decision to transfer a police officer from detective to patrol officer. City of Newark, P.E.R.C. No. 2011-53, 37 NJPER 47 (¶17 2010); see also, City of Elizabeth, P.E.R.C. No. 2007-16, 32 NJPER 321 (¶133 2006); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990). "Whether viewed as an assignment or a promotion, elevation to detective involves a public employer's non-negotiable prerogative to match the best qualified employees to particular jobs." Barneget Tp., P.E.R.C. 2009-43, 35 NJPER 44 (¶19 2009). Police officers who believe that they have been unjustly reassigned or transferred as a form of discipline must file a Superior Court action in lieu of prerogative writ. City of Trenton, P.E.R.C. No. 2005-59, 31 NJPER 58 (¶27 2005) (citing Monmouth Cty. v. CWA, 300 N.J. Super. 272, 289 (App. Div. 1997)); see also, City of Elizabeth.

The PBA has cited City of Newark, P.E.R.C. No. 2005-45, 30 NJPER 510 (¶174 2004), for the proposition that a deviation from an alleged past practice of reassigning employees based upon a seniority system is arbitrable where an employer does not



demonstrate a need to do so. Unlike that case, the PBA has failed to provide any evidence establishing that these parties had a past practice of reassigning employees based upon a seniority system.<sup>1/</sup> Rather, the Police Chief has certified that he transferred the grievant in order to acclimate him to road/patrol procedures pending a promotion to sergeant. We find that "[a]rbitration challenging [a] transfer[] based on [these] reasons would substantially limit the [Township's] policymaking powers."<sup>2/</sup> City of Newark and Newark Firefighters Union, P.E.R.C. No. 2005-2, 30 NJPER 294 (¶102 2004), aff'd 31 NJPER 287 (¶112 App. Div. 2005).

Accordingly, we restrain arbitration in this matter to the extent that the grievance challenges the substantive decision to transfer/reassign the grievant from the Detective Bureau to the Patrol Bureau and seeks the grievant's reinstatement as a detective.

We will not restrain arbitration over the claim raised that the grievant was contractually entitled to continue to receive

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1/ In its grievance, the PBA suggests that the Township has not transferred a detective prior to a promotion in the past. Similarly, the PBA alludes to a past practice in its brief. Despite submitting a certification, however, the PBA President has not certified that the parties had a past practice of reassigning employees based upon a seniority system.

2/ We express no opinion on the legitimacy of the Township's reasons for the transfer or the availability of any other forum to challenge those reasons.

additional pay (i.e., annual stipend). See City of Trenton, P.E.R.C. No. 2014-17, 40 NJPER 200 (¶76 2013); see also, City of Newark, 37 NJPER at 47; City of Elizabeth; Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991); Sayreville Bd. of Ed., P.E.R.C. No. 84-74, 10 NJPER 37 (¶15021 1983). However, if the PBA cannot prove the existence of an agreement to continue any additional pay after a transfer from the detective bureau, it would follow that the reduction was a direct consequence of the managerial decision to transfer the grievant. Absent such an agreement, an arbitrator cannot order that the grievant continue to receive additional pay. See Bloomfield Tp., P.E.R.C. No. 2010-55, 36 NJPER 29 (¶14 2010) (citing Wayne Tp.); see also, City of Elizabeth.

## ORDER

The request of the Township of Old Bridge for a restraint of binding arbitration is granted to the extent that the grievance challenges the substantive decision to transfer/reassign the grievant from the Detective Bureau to the Patrol Bureau and seeks

the grievant's reinstatement as a detective. The request is otherwise denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Bonanni and Eskilson recused themselves. Commissioner Wall was not present.

ISSUED: May 26, 2016

Trenton, New Jersey