

P.E.R.C. NO. 2006-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELLE PARK,

Petitioner,

-and-

Docket No. SN-2005-076

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, LOCAL 260,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Roselle Park for a restraint of binding arbitration of a grievance filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 260. The grievance asserts that a police records clerk was unjustly transferred from the Records Room to the Borough library. The Commission concludes that this grievance challenges the Borough's non-negotiable managerial prerogative to reassign personnel to a different position in order to deliver its services without disruption and in the manner it deems most efficient and is therefore not 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.

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Appearances:

For the Petitioner, Niedweske Barber, P.C., attorneys
(Linda J. Niedweske, on the brief)

For the Respondent, William Eccleston, President

DECISION

On May 10, 2005, the Borough of Roselle Park petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 260. The grievance asserts that a police records clerk was unjustly transferred from the Records Room to the Borough library.

The parties have filed briefs and exhibits. The Borough has filed the certification of the police chief. The Union president has submitted a certification. These facts appear.

The Union represents clerical employees. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2005. The grievance procedure ends in binding arbitration.

Civilian employees maintain the Records Room and the front desk and perform dispatching duties. The Records Room is a secure area with restricted access and is separate from other parts of the department. Two civilians are assigned to the Records Room.

The grievant was employed for 19 years as a records clerk. Her responsibilities included typing investigative reports and making folders for such reports, attending to the public at the Records Room window, and assisting police department personnel with records-related matters.

The chief is in charge of the Records Room. Sergeants, lieutenants and captains enter it daily. The chief states that officers and civilians must interact and that anyone working in the Records Room must be able to get along with divergent personalities.

Beginning on or about 1996, the grievant and a police captain developed an adversarial relationship as a result of the grievant's recent divorce and the captain's friendship with the grievant's ex-husband. The grievant claimed that the captain was harassing her and at one point the police chief disciplined the

captain for entering the Records Room when the grievant was alone. According to the chief, the animosity between the two reached the point where they could not utter a civilized word to each other. The chief states that there were one or two complaints a year and he would meet with each one alone to counsel him or her about relating to each other.

In 2003, the complaints became more frequent. The grievant also began to complain that the captain used other police officers, including a detective sergeant, her former supervisor, to harass her. The chief states that the atmosphere in the Records Room began to hurt the rest of the department. He received complaints from both civilian employees and other officers about their encounters with the grievant.

On January 21, 2004, the chief held a meeting in his office with the captain, the grievant, the other civilian employee in the Records Room, and the grievant's current supervisor, a police sergeant. The grievant was given permission to get a union representative. The chief states that before the grievant left, she pointed her finger in the captain's direction and asked in a loud and demeaning voice "what about his attitude and the attitude of (the detective sergeant) and how they harass me." The captain rose from his seat and demanded that the grievant sit down or she would be suspended. The grievant began yelling that she would not sit down nor would she leave the building. The

captain began yelling and followed the grievant out of the office, both screaming at each other. The grievant returned to the Records Room where she and the other civilian employee agreed to never speak again. The grievant was subsequently taken to the hospital to be treated for a pre-existing heart condition and high blood pressure. The grievant remained on sick leave until it was exhausted; she was then permitted to return to work on April 6. The chief placed her on indefinite paid suspension beginning April 7.

On February 6, 2004, the grievant filed criminal charges against the captain for assault, harassment and disorderly conduct arising from the January 21 meeting. On June 2, the captain was found guilty of two petty disorderly persons offenses. Pursuant to N.J.S.A. 2C:51-2, the conviction required forfeiture of the captain's public office. The captain appealed his conviction.

The chief determined that irrespective of the outcome of the captain's appeal, the grievant could no longer remain in the department because of her complaints about harassment from others and others' complaints about her disruptive attitude and behavior. Since he could not reassign any sworn officers, the chief decided to reassign the grievant. As there were no vacancies in the Township building and the Library director indicated that she needed additional help, the grievant was

transferred to the Borough library as of September 1, 2004. She maintained the same salary, benefits and seniority.^{1/}

On September 15, 2004, the Union filed a grievance asserting that the grievant was unjustly forced out of her position and permanently transferred to the Library. The grievance seeks reinstatement to her position in the police Records Department. When the Township did not uphold the grievance, the Union demanded binding arbitration. This petition ensued

On or about November 1, 2004, the captain's conviction was reversed and he was reinstated to his position.^{2/}

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

^{1/} The Township agreed to have her remain in the collective negotiations unit represented by Local 260, even though Library employees are not included in that unit.

^{2/} While the captain's appeal was pending, the Prosecutor had advised the chief not to pursue any discipline against either the captain or the grievant. Both were apparently served with "disciplinary notices" concerning the events of January 21, 2004.

are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the Borough may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

No statute or regulation is alleged to preempt negotiations.

The Borough asserts that non-disciplinary transfers are not mandatorily negotiable or legally arbitrable. It asserts that this transfer was required to maintain a harmonious, effective and non-hostile work environment within the police department.

The Union acknowledges that there were serious personality conflicts between the grievant and the captain but asserts that the disagreements did not interfere with the performance of her

job duties. It contends that this tension does not justify the Township's action in offering the grievant the choice of termination or a transfer to the Library to a position and in a department not represented by Local 260.

The Borough asserts that major disruption was caused by the disagreements, the grievant's increased complaints about harassment, and her difficulties in interacting with other employees. High-ranking officials could not communicate with the grievant without a third party. The Borough maintains that there was no other position in the Borough in which to place the grievant and her skills were transferrable to the Library, which needed the additional help. It points out that she has maintained her title, salary, and benefits, and that she will continue to be represented by the Union even though Library employees are not part of its collective negotiations unit.

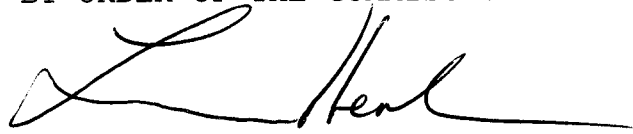
The substantive decision to transfer or reassign an employee to a different position is generally neither negotiable nor arbitrable. See, e.g., City of Jersey City v. Jersey City POBA, 154 N.J. 555, 568-574 (1998); Local 195; Ridgefield Park; UMDNJ, P.E.R.C. No. 95-88, 21 NJPER 179 (¶26114 1995); State of New Jersey, P.E.R.C. No. 92-50, 17 NJPER 501 (¶22245 1991); City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990). Here, the grievance challenges the Borough's non-negotiable

managerial prerogative to reassign personnel to a different position to deliver its services without disruption and in the manner it deems to be most efficient.

ORDER

The request of the Borough of Roselle Park for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners DiNardo, Fuller, Mastriani and Watkins voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Katz was not present.

DATED: September 29, 2005
Trenton, New Jersey
ISSUED: September 29, 2005