

P.E.R.C. NO. 92-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LONG BRANCH,

Petitioner,

-and-

Docket No. SN-91-91

LONG BRANCH POLICEMEN'S
BENEVOLENT ASSOCIATION,
LOCAL NO. 10,

Respondent,

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Long Branch Policemen's Benevolent Association, Local No. 10 against the City of Long Branch. The grievance asserts that the City reassigned a police officer from the detective division to the patrol division without just cause. The Commission finds that the transfer is not disciplinary, and that if the reassignment is a demotion under civil service law, then the employee has an alternate statutory appeal procedure.

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Respondent,

Appearances:

For the Petitioner, Kenney, Gross & McDonough, attorneys
(Mark S. Tabenkin, attorney)

For the Respondent, S.M. Bosco Associates, labor consultants
(Dr. Simon M. Bosco, on the brief)

DECISION AND ORDER

On June 11, 1991, the City of Long Branch petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Long Branch Policemen's Benevolent Association, Local No. 10. The grievance asserts that the City reassigned police officer Ralph DeFillipo from the detective division to the patrol division without just cause.^{1/}

The parties have filed affidavits, exhibits, and briefs. These facts appear.

^{1/} The parties use "transfer" and "reassignment" interchangeably. We will use the word "reassignment".

The City and the PBA entered into a collective negotiations agreement effective from January 1, 1989 through December 31, 1990. The grievance procedure ends in binding arbitration, but excludes disputes within the jurisdiction of the Merit System Board or this Commission. The contract further provides that "Civil Service provisions shall apply as to removal, suspension, fines, demotion and all other disciplinary actions."

The recognition clause of the 1989-1990 contract states that the PBA represents all the City's police officers. The City and the PBA, however, have agreed that when the successor contract is negotiated, the PBA will represent all non-supervisory police officers and the Long Branch Police Superior Officers Association will represent superior officers of the rank of sergeant and above.

The police department's chain of command contains these ranks from top to bottom: Director of Public Safety, captains, lieutenants, sergeants, and officers. There is no Director of Public Safety at present. The City has a Civil Service title of inspector, but not one of detective. According to Patrick Caron, a captain who has been nominated to be Director of Public Safety, "detective" does not appear in the chain of command because it is an assignment, not a rank.

The police department consists of five divisions: (1) Criminal Investigations (i.e. the Detective Division), (2) Patrol, (3) Administration, (4) Technical Services, and (5) Traffic. Each police officer is assigned to a division. According to Caron,

assignments are reviewed periodically to determine if the officers are the best qualified, and all officers may be reassigned for cross-training to make sure each officer can perform all assignments. According to John Callery, a detective and State PBA delegate, there have been no formal evaluations in the past three or four years and there is no cross-training program. Caron's reply certification concedes that past efforts at cross-training were sporadic, but asserts that a new policy of cross-training has been implemented to improve flexibility.

The City asserts that reassignments occur frequently and routinely; the PBA contests this characterization.

In August 1990, nine police officers were reassigned into or out of the Division of Criminal Investigations. Of those officers reassigned out of Criminal Investigations, four were reassigned to Patrol; two were reassigned to Technical Services, and one was reassigned to Administration. According to Callery, three officers were reassigned from Criminal Investigations to Patrol to increase staffing; Callery also asserts that to the best of his recollection, officers have not been removed from Criminal Investigations except for promotion or performance dissatisfaction and discipline.

Ralph DeFillipo, Sr., has worked in the police department since 1970 and is its oldest member. He has never received a poor evaluation or been reprimanded. He was assigned to Criminal Investigations on January 4, 1985, and named police officer of the

year in 1986. In the latter part of 1988, he differed with his superiors and the County Prosecutor over a controversial homicide investigation. DeFillipo was then reassigned to the Patrol Division. According to DeFillipo, Inspector John Bucciero told him he was being reassigned until "the heat cools down." On June 2, 1989, DeFillipo was reassigned to Criminal Investigations.

On January 25, 1991, DeFillipo was reassigned to the Patrol Division. That same day officer Robert Sama was reassigned from Patrol to Criminal Investigations. Six other reassignments were effective that month. DeFillipo still works in the same building.

DeFillipo asserts that his reassignment followed a PBA meeting at which he opposed Caron and the Mayor's desire to have a separate negotiations unit for superior officers. Caron denies that he knew, before reading DeFillipo's certification, that DeFillipo opposed a separate unit, and asserts instead that DeFillipo was reassigned because he believed that Sama, once trained, would be a more effective detective. Caron told DeFillipo that the reassignment was part of the periodic review of assignments and that DeFillipo had not done anything wrong.^{2/}

No disciplinary action preceded, accompanied, or followed DeFillipo's reassignment. The parties' contract provides that

^{2/} According to DeFillipo, Caron had assured him twice before that he would not be reassigned and that all reassignments had been completed. According to Caron, he told DeFillipo after the August 1990 reassignments that there were no plans at that time to reassign any other officer, including him.

officers assigned to the Detective Division "shall receive, in addition to base salary, \$475 per year." DeFillipo lost this differential. According to Callery, the \$475 a year is included in the annual base salary and is used in calculating pension contributions, overtime compensation, and longevity payments. According to Caron, the detective differential is pro-rated and paid as part of the bi-weekly pay check, but is separate from base pay; pensions are based on the officers' salaries for the last three years before retirement, and it is speculative to assume that the loss of a detective differential now will reduce DeFillipo's pension later; and the contract bases longevity payments on years of service instead of an officer's hourly rate of pay. While the differential is counted when determining an officer's hourly rate for purposes of overtime compensation, Caron asserts that DeFillipo's alleged loss of overtime compensation is speculative and unproven.

On February 18, 1991, the PBA filed a grievance on DeFillipo's behalf. The grievance asserts that DeFillipo had been demoted or discharged without just cause. The grievance sought DeFillipo's reinstatement as a detective.

On April 5, 1991, the Acting Business Administrator denied the grievance. He concluded that the City had a managerial prerogative and a contractual right to transfer DeFillipo.

The PBA demanded binding arbitration. This petition ensued.

The City asserts that it had a managerial prerogative to reassign DeFillipo; the reassignment was not disciplinary, and even

if it were disciplinary, it could not be contested through binding arbitration because DeFillipo has a right to appeal disciplinary determinations to the Merit System Board pursuant to N.J.S.A.

11A:2-14. The PBA asserts that the reassignment was disciplinary; DeFillipo does not have an alternate statutory appeal procedure; and Falcone v. De Furia, 103 N.J. 219 (1986), requires that this personnel action be viewed as a demotion rather than a reassignment under civil service law, thus making this grievance legally arbitrable. The City responds that De Furia applies only to communities with police chiefs and that arguments based upon De Furia must be presented to the Department of Personnel.

Management has a prerogative to transfer or reassign an employee to meet the governmental policy goal of matching the best qualified employee to a particular job. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). This is usually so even if a reassigned employee loses a shift differential or premium pay. City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty. Freeholder Bd., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985). We have therefore restrained arbitration over reassignments, like this one, from the detective division to another division. Oakland; 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).

Despite this caselaw, the discipline amendment to N.J.S.A 34:13A-5.3 permits binding arbitration over a police officer's reassignment if: (1) the reassignment is disciplinary, and (2) the officer has no alternate statutory appeal procedure. City of Atlantic City; Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER 742 (¶17278 1986); see generally CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984). In Hudson Cty., we permitted arbitration of a grievance contesting a shift reassignment for alleged misconduct and poor performance. Here, by contrast, no disciplinary action preceded, accompanied, or followed the reassignment and there is no evidence that the reassignment was based on misconduct or poor performance.^{3/} Under our caselaw, the loss of the differential and its indirect effect on overtime compensation and potential pension payments do not make this reassignment disciplinary. Oakland. Furthermore, if the Association's interpretation of De Furia is correct and the reassignment is a demotion under civil service law, then DeFillipo has an alternate statutory appeal procedure. See N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.8; Sayreville

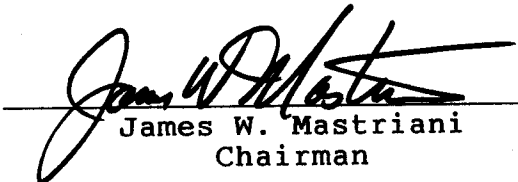
^{3/} The PBA's assertion that DeFillipo was reassigned for opposing the severance of superior officers from the negotiations unit must be litigated through unfair practice proceedings rather than through binding arbitration. Teaneck Bd. of Ed. v. Teaneck Teacher Ass'n, 94 N.J. 9 (1983); Jefferson Tp. Bd. of Ed. v. Jefferson Tp. Ed. Ass'n, 188 N.J. Super. 411 (App. Div. 1982); Garfield.

Bor., P.E.R.C. No. 87-160, 13 NJPER 585 (¶18217 1987); Woodbridge Tp., P.E.R.C. No. 86-39, 11 NJPER 626 (¶16219 1985). The PBA must present that argument to the Department of Personnel.^{4/}

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision.

DATED: October 17, 1991
Trenton, New Jersey
ISSUED: October 18, 1991

^{4/} We express no opinion on this question of civil service law.