

P.E.R.C. NO. 97-127

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,  
Petitioner,

-and-

Docket No. SN-97-32

POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey Transit Corporation for a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Local 304. The grievance asserts that NJT violated the parties' collective negotiations agreement when it selected among police officers for assignment to a new unit. The Commission finds that public employers have a non-negotiable prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. The employer required special skills and characteristics in seeking officers to start up the new unit and it chose among the applicants accordingly.

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, Peter Verniero, Attorney General  
(David S. Griffiths, Deputy Attorney General)

For the Respondent, Pope, Grossman, Begrin and Toscano,  
attorneys (Annette Verdesco, of counsel)

DECISION AND ORDER

On October 15, 1996, the New Jersey Transit Corporation ("NJT") petitioned for a scope of negotiations determination. NJT seeks a restraint of binding arbitration of a grievance filed by Policemen's Benevolent Association, Local 304. The grievance asserts that NJT violated the parties' collective negotiations agreement when it selected among police officers for assignment to a new unit.

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

The PBA represents police officers below the rank of captain. The parties' collective negotiations agreement has a grievance procedure ending in binding arbitration. The agreement includes these provisions:

Article I, Section 2: Police officers may serve as appointed by the Chief of Police in appointed positions such as Detective, Anti-Crime Unit, Canine Corps, Training and Staff shall not be subject to the provisions of this agreement that involve bulletining, awarding or the exercise of seniority.

Article I Section 3(a): The provisions set forth in this Agreement shall constitute an agreement between NJ Transit Police Department and its police officers below the rank of Captain, represented by the [PBA] and shall govern the hours of service, working conditions and rates of pay of the respective positions and employees classified herein.

Article I Section 3(c): The establishment of any position in the Police Dept., the duties of which are similar to those of a position listed in paragraph (a) of this Scope, shall carry the title, rate of pay and working conditions of such comparable position.

Article XXIII Section 1(a): All positions will be posted for selection from October 1st to October 31st of each year commencing October 1, 1991.

Article XXIII Section 2: Positions awarded or assigned, will be based on fitness, ability and seniority.

Article XXIII Section 9: All new positions or open positions may be posted for selection anytime during the calendar year.

On May 15, 1996, NJT's police chief created a new "Mobile Enforcement Unit" (MEU) to "provide highly visible uniformed teams that will concentrate in problem areas in bus operations." The

MEU's mission is to patrol revenue service buses to provide safety for passengers and NJT employees and to enforce motor vehicle laws. The chief asserts that she wanted to ensure a successful start for the MEU by staffing it with officers whose experience and abilities best suited the needs of the assignment. She therefore required MEU officers to have:

[P]rior experience with bus operations (including familiarity with the bus commuter population, the employees operating the buses and the operational procedures of the bus system), enforcement of motor vehicle laws and a demonstrated appreciation of and dedication to the Department's community policing philosophy....

A sergeant was selected to head the unit. According to the sergeant's affidavit, it was anticipated that as experience and skill were gained, the MEU would expand and most officers would become trained for MEU work. The sergeant posted openings for two other positions in the MEU and 17 officers applied. Each applicant submitted a report writing sample and a resume explaining the applicant's qualifications for the unit and explaining their interest in working in it. In addition to the characteristics listed by the chief, the sergeant considered each applicant's familiarity with the mechanical aspects of bus operations, disposition, and attitude. He then ranked each applicant on a multi-factor scale. As the highest-rated officer was engaged in other specialized training, the sergeant chose the next two highest-ranked applicants for the MEU positions. Two other officers were later assigned to the MEU in order of ranking.

The PBA asserts that when an MEU officer is unavailable or off-duty, a regular patrol officer will perform MEU functions. It also asserts that some officers assigned to the MEU do not have any specialized training. The PBA, however, did not submit any certifications. The record does not reveal what effects, if any, MEU assignments have on such matters as work hours, pay, or overtime opportunities.

On July 1, 1996, the PBA filed a grievance asserting that MEU assignments violated contractual posting, bidding, and seniority requirements. The grievance sought a directive requiring that the employer: cease its method of making MEU assignments; put MEU positions up for bid; cease unilaterally determining which positions were not subject to the agreement; and abide by the master overtime list in filling vacancies resulting from illness or time off. The chief responded that the MEU assignments were not subject to the contractual bidding procedures; the management rights clause applied; and officers assigned to the MEU were chosen for a special duty assignment, including two weeks of training with bus operators. She therefore denied the grievance. So did NJT's Director of Labor Relations. The PBA demanded arbitration. 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 this grievance or any contractual defenses the employer may have.

N.J.S.A. 27:25-15.1 established the NJT police department. Subsection (a) grants NJT police officers "general authority, without limitation, to exercise police powers and duties, as provided by law for police officers and law enforcement officers, in all criminal and traffic matters at all times throughout the State...." Subsection (b) specifies that the "terms and conditions of ... labor contracts [must be] within the scope of negotiations as defined by the Public Employment Relations Commission under the New Jersey Employer-Employee Relations Act."

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 (1981), outlines the steps of a scope of negotiations analysis for issues involving firefighters:

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. 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. [87 N.J. at 92-93; citations omitted]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute 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). Preemption is not an issue so Paterson bars arbitration only if the agreement alleged would substantially limit governmental policymaking powers.


Public employers have a non-negotiable prerogative to assign employees 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. Cf. New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996). The employer required special skills and characteristics in seeking officers to start up the MEU and it chose among the applicants accordingly. An arbitrator may not second-guess those

assessments. Contrast New Jersey Transit Corp. (duration of patrol rotation cycle permissively negotiable). We therefore restrain arbitration.

ORDER

The request of the New Jersey Transit Corporation for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioners Boose and Wenzler were not present.

DATED: April 24, 1997  
Trenton, New Jersey  
ISSUED: April 25, 1997