

P.E.R.C. NO. 98-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-98-04

POLICE SUPERIOR OFFICERS'
ASSOCIATION OF NEWARK, NEW
JERSEY, INC.,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Newark for a restraint of binding arbitration of a grievance filed by the Police Superior Officers' Association of Newark, New Jersey, Inc. The grievance contests the reassignment of a lieutenant who had been assigned to the Newark credit union office and the City's not replacing him in that office. The Commission finds that public employers have a prerogative to transfer or reassign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. The Commission determines that this case does not fall within the release time for union business precedent since the officer assigned to the credit union to perform security and other tasks at the credit union remained on active duty and did not negotiate or administer collective negotiations agreements.

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, Michelle Hollar-Gregory, Corporation
Counsel (Isabela Castellanos, Assistant Corporation
Counsel, on the brief)

For the Respondent, Markowitz & Richman
(Stephen C. Richman, on the brief)

DECISION

On July 16, 1997, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Police Superior Officers' Association of Newark, New Jersey, Inc. The grievance contests the reassignment of a lieutenant who had been assigned to the Newark credit union office and the City's not replacing him in that office.

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

The Association represents sergeants, lieutenants, and captains in the police department. The parties' collective

negotiations agreement contains a grievance procedure ending in binding arbitration.

The Newark credit union was created pursuant to the Federal Credit Union Act, 12 U.S.C. §1751 et seq. It promotes thrift and creates a source of credit. The credit union is located in a building owned and operated by the City; that building houses the City's police academy and the Association's offices. The credit union has over 2300 members, including police officers from municipalities -- such as Belleville, Bloomfield, Nutley, Verona, and Millburn -- without their own credit unions. However, over 80% of the credit union members are employees of the Newark police department or retirees from that department.

Richard Christopher is a police lieutenant and the treasurer of the Newark credit union. The treasurer acts as the general manager of the credit union.

On May 16, 1996, Christopher was assigned to the Administrative Liaison Division and specifically to the credit union office. There, Christopher provided armed security, solicited new credit union members, helped employees apply for membership, kept the books, did clerical tasks, and made bank deposits.^{1/}

^{1/} A rank-and-file police officer, Joseph Calabrese, preceded Christopher in the credit union office, but it is unclear whether other officers had received such assignments

On August 30, 1996, the new Director of Police issued a personnel order (96-337) directing several transfers and reassignments. Christopher was reassigned from the credit union office to the field operations bureau in the south district. No officer replaced Christopher in the credit union office. The personnel order also reassigned officers from the Community Services Division, which was abolished, to other positions. Some officers in the Community Services Division had been assigned to the Police Athletic League (PAL) and had overseen sports activities for Newark youth.

On September 6, 1996, the Association grieved Christopher's reassignment and the absence of a replacement. The grievance alleged that the City had violated contractual provisions entitled Recognition, Maintenance of Standards, Extra Contract Agreements, Fully Bargained Provisions, and Duration.^{2/} The grievance does not contest the reassignments out of the Community Service Division and PAL activities.

1/ Footnote Continued From Previous Page

before. According to the Association, a police officer was assigned to the credit union office in the early 1970's and continued to work there until the 1980's; a civilian replaced that officer briefly; and a retired police officer then held that position.

2/ The Fraternal Order of Police, Newark Lodge No. 12 represents rank-and-file police officers. The FOP filed a similar grievance. The FOP has not sought to arbitrate that grievance so we do not consider it further.

After the City denied the grievance, the Association demanded arbitration over "the City's removal of a Credit Union Representative." 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 City may have. We stress that point because many of the City's arguments, especially those in its reply brief, address whether it did agree to place an officer in the credit union office, not whether it could have agreed.

The scope of negotiations is broader for police officers and firefighters than for other public employees. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), sets forth these tests for determining the negotiability of a subject affecting police officers:

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

Because this dispute arises as a grievance, we will not restrain arbitration if the grievance is at least permissively negotiable -- that is, the Association's claim is not preempted and would not substantially limit governmental policymaking. Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982).

A statute or regulation will not preempt negotiations unless it specifically, expressly, and comprehensively sets an employment condition and eliminates the employer's discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); Local 195, IFPTE v. State, 88 N.J. 393, 403-404 (1982); Paterson at 96-97; State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). We reject the City's assertion that N.J.S.A. 40A:14-118 meets this demanding standard. That statute authorizes the police chief to "prescribe the duties and

assignments of all subordinates and other personnel," but does not address whether a police officer may be assigned to a credit union office or eliminate the employer's discretion to make such an assignment. We have rejected claims that N.J.S.A. 40A:14-118 preempts negotiations and do so again here. See, e.g., City of Newark, P.E.R.C. No. 90-122, 16 NJPER 394 (¶21164 1990); Rochelle Park Tp., P.E.R.C. No. 88-40, 13 NJPER 818 (¶18315 1987), aff'd NJPER Supp.2d 198 (¶176 App. Div. 1988); Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd NJPER Supp.2d 97 (¶80 App. Div. 1981); see also Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 330 (1989) (question is not whether a statute authorizes an action, but whether it bars negotiations).

Public employers have a prerogative to transfer or reassign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; Matawan-Aberdeen Reg. School Dist. Bd. of Ed., P.E.R.C. No. 97-131, 23 NJPER 337 (¶28153 1997). Leaves of absence and release time for union officials for representational purposes are mandatorily negotiable. See Newark at 396 and cases cited therein. See also Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance and Custodial Ass'n, 152 N.J. Super. 235, 243-244 (App. Div. 1977); South Orange-Maplewood Ed. Ass'n v.

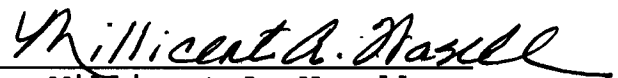
South Orange Bd. of Ed., 146 N.J. Super 457, 462 (App. Div. 1977). This case, however, is not covered by the release time precedents because the officer assigned to perform armed security and other tasks at the credit union office remained on active duty and did not negotiate or administer collective negotiations agreements.

Requiring the City to continue an alleged practice of assigning an active duty officer to perform armed security and other tasks at the credit union would substantially limit governmental policymaking and may not be contested through binding arbitration.^{3/}

ORDER

We grant the request of the City of Newark for a restraint of binding arbitration over the decision not to assign an active duty police officer performing armed security and other tasks at the credit union.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Finn abstained from consideration. Commissioner Boose was not present.

DATED: February 26, 1998
Trenton, New Jersey
ISSUED: February 27, 1998

^{3/} A separate question is whether the employer could legally agree to extend a release time provision to cover a credit union official as well as other union officials. The City does not argue that a contractual agreement to provide such release time would be illegal, so we do not consider it further.