

P.E.R.C. NO. 99-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-99-3

MERCER COUNTY SHERIFF'S  
OFFICERS, P.B.A. LOCAL 187,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Mercer County Sheriff for a restraint of binding arbitration of a grievance filed by the Mercer County Sheriff's Officers, PBA Local 187. The grievance alleges that the employer violated a seniority provision in the parties' collective negotiations agreement when it reassigned two sheriff's officers from their shift assignments at the airport and replaced them with junior officers and investigators. The Commission finds that if the employer agreed that officers could choose shifts by seniority before assignments are made and the employer did not have any governmental policy reason to deviate from the terms of that agreement with respect to the two reassignments in question, enforcement of the agreement would not substantially limit governmental policymaking powers.

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, Alfred B. Vuocolo, Jr., County Counsel  
(David W. Boyer, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Charles E. Schlager, Jr., on the brief)

DECISION

On July 9, 1998, the Mercer County Sheriff petitioned for a scope of negotiations determination. The petition seeks to restrain binding arbitration of a grievance filed by the Mercer County Sheriff's Officers, PBA Local 187. The grievance alleges that the employer violated a seniority provision in the parties' collective negotiations agreement when it reassigned two sheriff's officers from their shift assignments at the airport and replaced them with junior officers and investigators.

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

The PBA represents sheriff's officers. The parties' collective negotiations agreement is effective from January 1,

1996 through December 31, 1998. The agreement's grievance procedure ends in binding arbitration.

Article 3 of the parties' agreement is entitled Work Schedules. Article 3.1 provides:

The regular work shifts will be determined by the Employer on January 1 of each year. The Employer reserves the right to adjust work schedules and/or work shifts upon reasonable notice to the employee. Work shifts shall consist of thirty-five (35) hours per week, or seven (7) hours per day, excluding lunch.

Article 11 is entitled Seniority. It provides, in part:

11.1 Seniority is defined as an employee's continuous length of service with the Sheriff's Office, beginning with the date of appointment as a permanent Civil Service employee, Sheriff's Officer.

\* \* \*

11.4 In the event the employer initiates a multiple shift system then the shift positions shall be bid by seniority.

On January 2, 1997, the employer created and designated shifts for each department. The five departments listed are Transportation, Process, Detective, Sergeants, and Airport/Other County Facilities. Multiple eight-hour shifts are set forth for each department. The Process department is the only department that does not operate 24 hours a day.

It appears that two years before the creation and designation of shifts, the Sheriff posted a sign-up sheet for the airport security assignment. Officers had the opportunity to select their assignment and shift by seniority. Officers Briel

and Szubrowski had been assigned to airport security for at least the last two years.

On September 23, 1997, Officers Briel and Szubrowski were reassigned from their shift and location. The parties' briefs do not reveal what shift the grievants worked at the airport nor does it reveal what shift they were reassigned to, where they were reassigned, or why. The employer filed an untimely response to our request for that information and it did not serve a copy of its response on the PBA. According to that submission, shifts at the airport at the time of the reassignment were 6 a.m. to 2 p.m., 2 p.m. to 10 p.m., and 10 p.m. to 6 a.m. Briel worked the 6 a.m. shift and Szybrowski worked the 2 p.m. shift. After the reassignment, both worked 8:30 a.m. to 4:30 p.m. The employer did not inform us where they were reassigned or the reason for the reassignment. It simply asserts that they were "reassigned because of managerial prerogative."

On September 30, 1997, the PBA filed a grievance over the reassignment. The grievance states:

On or about above date, officers were reassigned shifts and position without cause. They were replaced with a junior officer and investigator. This is a violation of the contract and past practices.

Officers were assigned to airport on a seniority basis. Officers were exempt from regular rotation in the last two years. Officers have unblemished records and receive acclaim from supervisors.

The grievance was denied at the first level. On October 22, 1997, the County administrator denied the grievance. That denial states:

On October 22, I held a hearing in regards to a grievance submitted on behalf of Officers Briel and Szubrowski in which they contested their reassignment and change of shift from their assigned post at the Airport.

The grievance cited a violation of Section 11.4 of the contract which provides, "In the event that the employer initiates a multiple shift system, then the shift position shall be bid by seniority." During our discussions at that hearing, it was confirmed that the Sheriff has the right to make shift assignments. However, the union continued to contest the fact that these assignments could only be made in the context of the seniority provision allowing officers to select their shifts. Thus, it would be the union's contention that the employee first had a right to select the shift that they wish to work, then the Sheriff would make the assignment to comport with the shift that had been selected. Obviously to follow the union's plan would severely restrict the Sheriff's ability to make job assignments, an inherent managerial prerogative.

It is the employer's contention that the assignment of the employee would first be made and then the employee could select the shifts then available to that assignment. I agree with the Sheriff's opinion and therefore deny this grievance.

On November 11, 1997, the PBA demanded arbitration. This petition ensued.

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.

Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and 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. [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]

The employer asserts that Article 11 does not apply because this matter does not involve the initiation of a multiple shift system, but the right of the employer to make job/shift assignments. However, we have no jurisdiction to consider this contractual defense. [Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978)].

The employer further asserts that giving employees the right to select their shifts and then having the Sheriff make assignments would unduly restrict the Sheriff's ability to make

job assignments. The Sheriff contends that assignments should be made first and then employees can select shifts available for that assignment. The PBA responds that the employer has the right to create, expand, reduce, modify or eliminate work schedules and work shifts. However, it argues that once the needs of the department have been established, the contract allows for officers to select their shifts and assignments by seniority as long as the department's needs are met. It specifically asserts that the two officers in this case have been "exempt from [the] regular rotation for the last two years" and should be permitted to continue to work their airport shifts.

Public employers and majority representatives may agree that seniority can be a factor in shift assignments where all qualifications are equal and managerial prerogatives are not otherwise compromised. See, e.g., City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd NJPER Supp.2d 245 (¶204 App. Div. 1990). 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 interplay between seniority as a basis for choosing shift assignments and managerial needs as a basis for exceptions to any agreed-upon seniority system must be assessed

case-by-case. The assessment in each case must focus on the specific wording of a contract proposal or the specific nature of an arbitration dispute given the facts contained in the record and the arguments presented to us. In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); see also City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

In this case, two officers were allegedly exempted from the regular rotation and were assigned to the airport on a security basis. Two years later, they were reassigned from the airport to other assignments on other shifts. The employer has not suggested that qualifications, problems, or any other managerial reason prompted these shift changes. The PBA asserts that the employer agreed to permit these officers to choose shifts based on seniority before assignments are given out. For purposes of this decision, we must assume that such an agreement was made. Ridgefield Park. Given the sketchy record, we limit our inquiry to whether such an agreement could be enforced through binding arbitration under the particular circumstances of this case without substantially limiting governmental policymaking powers. Absent an articulated managerial need to deviate from such a system, the PBA may seek to enforce the alleged agreement through binding arbitration in this instance. If the employer agreed that these officers could choose shifts by seniority before assignments are made and the employer did not have any governmental policy reason to deviate from the terms of that agreement with respect to



the two reassignments in question, enforcement of the agreement would not substantially limit governmental policymaking powers. See Paterson. The employer is, of course, free to raise any operational concerns to the arbitrator in response to the union's seniority claims. Borough of Highland Park, P.E.R.C. No. 95-22, 20 NJPER 390 (¶25196 1994) (shift assignment based solely on seniority not mandatorily negotiable).

ORDER

The request of the Mercer County Sheriff for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan and Finn voted in favor of this decision. None opposed. Commissioner Ricci abstained from consideration.

DATED: November 23, 1998  
Trenton, New Jersey  
ISSUED: November 24, 1998