

P.E.R.C. NO. 2000-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-99-59

P.B.A. LOCAL NO. 277,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of proposals made by P.B.A. Local No. 277 in successor contract negotiations with the Camden County Sheriff. A proposal to require binding arbitration of minor disciplinary disputes is mandatorily negotiable. A proposal to have bidding for shifts and assignments is not mandatorily negotiable, and may not be submitted to interest arbitration, to the extent it would pertain to assignments described in the Sheriff's certification as requiring special qualifications.

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, Howard S. Wilson, Counsel to the
Office of the Sheriff, on the brief

For the Respondent, Klatsky & Klatsky, attorneys
(Fred M. Klatsky, on the brief)

DECISION

On February 10, 1999, the Camden County Sheriff petitioned for a scope of negotiations determination. The petition seeks a determination that negotiations proposals made by P.B.A. Local No. 277 are not mandatorily negotiable and may not be considered by an interest arbitrator for inclusion in a successor collective negotiations agreement.

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

The PBA represents sheriff's officers, sheriff's investigators, senior ID officers and sheriff's officer sergeants employed in the Camden County Sheriff's Department. The employer and the PBA are parties to a collective negotiations agreement which expired on December 31, 1998. The parties are in interest arbitration.

Article XX of the parties' agreement is entitled Grievances. Section 2(a), provides:

The term "grievance" means a complaint that there has been an improper application, interpretation, or violation of this Agreement, any County policy governing P.B.A., or any administrative decision affecting any member or members of P.B.A. However, all disciplinary matters will be handled under the present provisions of Civil Service and Statutory Requirements and will not be processed under the grievance procedure.

The PBA proposes the following change to the second sentence of Section 2(a):

Consistent with the Law Enforcement Officers' Bill of Rights and with the New Jersey Department of Personnel, all disciplinary actions, whether considered to be minor or major disciplinary infractions, shall be subject to the grievance procedural terms and conditions of this agreement and the Statutory provision of the Laws of the State of New Jersey.^{1/}

The PBA also proposes adding the following new section to Article XX, Grievances.

Section 8. The Sworn Law Enforcement Employees of the Camden County Sheriff's Department shall be subject to the New Jersey Attorney General's Guidelines as they relate to Internal Affairs investigations. All violations/transgressions of said guidelines shall be subject to the grievance procedures provided in this agreement, including arbitration, if necessary.

^{1/} In its brief, the PBA amends this proposal to cover only minor discipline, recognizing that any appeal of major discipline must be through Civil Service procedures.

The employer asserts that these proposals are incompatible with N.J.S.A. 34:13A-5.3 and are not mandatorily negotiable. It notes that N.J.S.A. 34:13A-5.3, as amended by L. 1996, c. 115, states that disciplinary review procedures agreed to by public employers "may" provide for binding arbitration of disputes involving the minor discipline of any public employee protected by N.J.S.A. 34:13A-5.3, including employees with statutory tenure or civil service protection but excluding the state police. It maintains that the use of the word "may" indicates that the Legislature intended to make binding arbitration of minor disciplinary disputes permissively and not mandatorily negotiable. Therefore, it argues that it has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The PBA counters that Hunterdon Cty. Prosecutor, P.E.R.C. No. 98-141, 24 NJPER 291 (¶29137 1998), held that a proposal to permit binding arbitration of minor disciplinary determinations was mandatorily negotiable. With respect to its proposal to make violations of the Attorney General's guidelines subject to the grievance procedure, the PBA notes that N.J.S.A. 40A:14-181 requires every law enforcement agency to adopt and implement guidelines consistent with the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the

Department of Law and Public Safety. It asserts that its request to incorporate these guidelines in the parties' agreement is mandatorily negotiable, as is its proposal to make violations of the guidelines subject to the grievance procedure.

N.J.S.A. 34:13A-5.3, as amended by L. 1996, c. 115, provides, in part:

[T]he majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

* * *

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L. 1968, c. 303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S. 53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for

any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year. [Emphasis added]

Within the context of a statute stating that employers "shall" negotiate disciplinary review procedures, the underscored "may" indicates that employers must negotiate over, but need not agree to, proposals to submit disputes involving minor discipline of certain employees to binding arbitration. See Hunterdon Cty. Bd. of Chosen Freeholders and CWA, 116 N.J. 322, 338 (1989); Monmouth Cty. and CWA, 300 N.J. Super. 272, 289-291 (App. Div. 1997); contrast N.J.S.A. 34:13A-29 (school district grievance procedures must include binding arbitration as the terminal step with respect to disputes involving the imposition of reprimands and discipline, as defined in N.J.S.A. 34:13A-22). The employer's contention that L. 1996, c. 115 created a permissive subject of negotiations is inconsistent with the fact that N.J.S.A. 34:13A-5.3 pertains to all public employees, other than the State police, covered by the Act, while the permissive category applies only to police officers and firefighters. See Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 95 (1981). Moreover, we have previously held that a proposal to submit minor disciplinary disputes to binding arbitration is mandatorily negotiable. Hunterdon Cty. Prosecutor.

For these reasons, we hold that the PBA's proposal to amend Article XX, Section 2(a) to require binding arbitration of

minor disciplinary disputes is mandatorily negotiable.

We also hold that the PBA's proposal to add a new Section 8 to Article XX is mandatorily negotiable except to the extent it would require binding arbitration of major disciplinary actions that arise out of alleged violations of the Internal Affairs Guidelines. Hunterdon Cty. Prosecutor. The employer does not object to the first sentence of the proposal.

Article XIII is entitled Personnel Regulations. The last section provides:

Section 4. When openings exist in the various job titles covered herein or in titles higher than same, qualifications for such various titles or promotions shall be written so as to consider comparable qualifications of all individuals employed in the Department wherever situated in accordance with Civil Service Classifications and Rules and Regulations.

The PBA originally proposed replacing Section 4 with provisions which would make job titles, assignments, positions and shifts subject to annual job bidding based on seniority and college credits, except for assignments to certain specialized units. In its brief, the PBA revised its shift assignment proposal as follows:

A. Commencing with the 15th of the month following the execution of this Agreement, and subsequently January 1 of each year thereafter, shift assignments shall be made, where all qualifications are equal (except for seniority and college degrees), pursuant to a point system based on seniority and earned college degrees bid system. Standard slips with choices for shift assignments shall be developed and distributed to all affected personnel by October 15 of each year and each

employee shall return his preference slip before November 15 of each year. The employee shall list his/her shift assignment choices giving first, second and third preferences. Assignments shall then be made based upon total points calculated from a combination of points for seniority and college degrees earned as follows:

1. Officers shall be given five points for each continuous year that they have been a permanent sworn law enforcement officer employed by the Camden County Sheriff's Department. A year shall be considered to be the calendar year. Officers who have incomplete full years of service shall be credited with one point for each two full months of service. (example: 6 years, 5 months of service = 32 points).

2. Officers who have earned college degrees in a law enforcement curriculum shall receive the following points: Associates - 2.5 points; Bachelors - 5 points; Masters - 5 points; Doctorate - 5 points.

3. Ties will be broken as per the following:

(a) The employee's date of hire with the County, as a permanent law enforcement officer/employee continuously employed by the Camden County Sheriff's Department.

(b) The employee's temporary time, if any, as a law enforcement officer/employee continuously employed by the Camden County Sheriff's Department. (5 points will be given for each year).

(1) Ties will be decided by the date of hire as a temporary law enforcement officer.

(c) When a tie cannot be decided using the formula above, the employees last name in alphabetical order shall prevail.

(d) If a tie still cannot be decided, then the Sheriff will pick one.

B. With the exceptions of those shift assignments set forth in Paragraph C below, all eligible unit members will be able to select shift assignments through the bidding procedures outlined above in Paragraph A. Shift assignments shall include days off if appropriate, shift, and general assignment within a shift.

C. Nothing contained in this entire Article shall be interpreted to mean that assignments such as K-9, Internal Affairs, Missing Persons, Prosecutor's Office, Dive Team, Sheriff's Emergency Response Team (SERT), Bomb Unit, and Helicopter Corp are to be bid. Those assignments remain a prerogative of the Sheriff or his designee, which shall be in accordance with controlling statutes. Further, in order to meet with needs of training and/or specialized abilities, shift assignments may need to be altered in order to meet the bona fide safety needs of citizens of the County.

In these cases, the changes shall be made with timely notice and explanation and shall last until such time as the specific needs have been met, at which time the affected employee shall be returned to his bid shift.

D. This section shall be applied equally, among members of the same rank, where applicable.

E. This section will not preclude employees from voluntarily switching or swapping shift assignments with one another prior to the rebid date. However, such switches of shifts and assignments shall occur with the approval of the Sheriff or his designee. Such approval shall not be arbitrarily or capriciously denied.

The PBA represents approximately 162 unit members who work in a variety of units within the uniform, administrative/civil and investigative divisions of the

department. Paragraph C of the PBA's proposal exempts 16 positions in certain units from the proposed bidding system, along with an unspecified number of part-time positions on the Dive Team and the SERT. The PBA states that it seeks to apply its proposal to certain other positions within the three divisions. Those positions and shift assignments are as follows.

Within the Uniform Division, the Hall of Justice has approximately 50 employees who work two different shifts: the 8:30 a.m. to 4:30 p.m. shift to which most officers are assigned, and the 7:00 a.m. to 3:00 p.m. shift on which a few officers work. The duties of these officers are not described, although they presumably assist in court proceedings. Also included in the Uniform Division are approximately 30 employees assigned to Transportation. These officers pick up prisoners from towns and transport them to jail, hospitals, and court. This unit works seven days a week and has three shifts: 8:00 a.m. to 4:00 p.m., 4:00 p.m. to midnight, and midnight to 8:00 a.m. Finally, the Transportation-Lakeland Division has about five employees assigned who work next to the Juvenile Center. The PBA does not indicate what hours these employees work.

Within the Investigative Division, the Special Investigation Unit has approximately 18 unit members who work 8:30 a.m. to 4:30 p.m. serving warrants throughout the County. Also within the Investigative Division is the Identification Unit, with about 27 employees. This unit operates 24 hours a day, seven days

a week; it identifies prisoners coming into and going out of the system and maintains statutorily required records.

Within the Administrative/Civil Division, the Civil Processing Unit has approximately nine unit members who serve civil complaints and other civil process. They report to work between 8:30 a.m. and 9:30 a.m. Monday through Friday, but otherwise set their own schedules.

The PBA also states that its proposal would apply to several miscellaneous assignments in security, records, and intelligence, but does not note the shifts that apply to those positions. Further, the organizational chart submitted by the employer includes certain assignments in the special services, crime prevention, and training/armorer units that are not mentioned by the PBA but which we assume are intended to be encompassed by its proposal because they are not specifically excluded.

The employer asserts that the proposal is not mandatorily negotiable because assignments, reassignments and transfers are management prerogatives. While it agrees that the 16 positions in the eight units listed by the PBA should be excluded from any bidding proposal, it asserts that opening the remaining 146 positions to bidding would threaten the safety of the public because it would result in positions being filled by unqualified officers. It asserts that most department positions require special qualifications or training for an officer to be competent.

In this vein, the employer has submitted a certification by the Sheriff identifying 66 positions (in addition to those exempted by the PBA proposal), which it asserts require specific qualifications and experience. That certification provides as follows.

The Training/Armor unit includes three unit members (one sergeant, one sheriff's officer and one training officer) who provide firearms and other training to the remaining officers. One of the officers is an armorer who is responsible for repairing weapons. The Sheriff states that these officers "require or have had" special training and certification from the Police Training Commission as instructors.

In the Civil Office, a sergeant oversees 14 civilian employees. This unit processes foreclosures, civil process, wage attachments, writs of execution and other paperwork. The Sheriff states that the sergeant in charge has to have an understanding of these procedures, and he maintains that a lengthy training period and years of experience in the unit are required to gain proficiency.

In the Civil Process unit, one sergeant oversees eight officers who are process servers throughout the County. Each officer is assigned a geographical area of the County, requiring a period of adjustment. These officers set their own hours and are virtually unsupervised while performing their duties. The employer asserts that not all sheriff's officers have the

temperament necessary to work without supervision. The employer also points out that one officer is responsible for foreclosure evictions and another is assigned execution sales, and maintains that each of these areas requires a lengthy period of training and experience.

The Special Services Unit consists of one sergeant and one officer who are responsible for uniforms, equipment and vehicles. The Sheriff states that these positions have been filled by the same individuals for many years due to their familiarity with the process of procuring equipment.

The Crime Prevention Unit consists of one sergeant and three sheriff's officers who visit schools and public functions in the County and teach and promote crime prevention. One officer has created a persona called "Willie the Crime Fighter" which took him years to perfect. The Sheriff asserts that these positions require several months of training and could not be easily reassigned.

The Records Unit has one officer. The Sheriff asserts that this officer has held the position for several years due to the need for continuity.

Jury Management consists of one sheriff's officer who maintains the records for notifying county residents who have failed to appear for jury service. The Sheriff asserts that while the training period for this job is short, continuity is important.

The Special Investigations Unit is comprised of a captain, lieutenant, three sergeants and 15 sheriff's officers. They are responsible for serving all criminal and domestic warrants for the County. This is a plainclothes division. The Sheriff states that these officers develop and maintain an extensive informant system to aid them in locating felons. Although supervisors are assigned to the unit, the officers are essentially unsupervised while performing their duties. The Sheriff asserts that these officers need to have street experience to perform and lack of experience can be deadly because many of the felons are armed and dangerous.

The Identification Bureau is comprised of a captain, two lieutenants, nine sergeants and 18 sheriff's officers. This unit is responsible for operating the County's Criminal Identification Bureau. The officers operate the computerized photo imaging system and the Criminal Justice Information System, including access to the National Criminal Information Center, the State Criminal Information Center and New Jersey Department of Motor Vehicles. Officers also have to classify fingerprints which requires 80 hours of instruction. The Sheriff asserts that while training can be done in 4-6 months, proficiency requires years of ongoing experience.

Given these requirements, the Sheriff maintains that the PBA proposal would result in chaos, since it would allow officers with seniority to replace trained officers in these specialized units. Moreover, the Sheriff questions how he can preserve a pool

of qualified personnel to fill the remaining 80 positions, 50 of which are in the Hall of Justice and 30 in the Transportation Units. The Sheriff maintains that every time he makes an assignment, another officer is displaced. He further asserts that the proposal would undermine his ability to provide cross-training and an appropriate mix of experienced personnel in the Hall of Justice and Transportation units. Finally, the employer asserts that the PBA has not provided any evidence that all sheriff's officers are qualified to perform the functions of each unit of the Sheriff's Department.

The PBA counters that its proposal is almost identical to a proposal found to be mandatorily negotiable in 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). The PBA also relies on Borough of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988); Borough of Middlesex, P.E.R.C. No. 92-32, 17 NJPER 470 (¶22225 1991); New Jersey Transit Corp., P.E.R.C. No. 96-78, 22 NJPER 199 (¶27106 1996) and Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998). The PBA asserts that the issue is not whether any of the assignments require special qualifications, but whether the PBA's proposal preserves the Sheriff's managerial prerogative to take into account specialized skills or training needs in assigning officers. The PBA contends that, like the proposal in Asbury Park, its proposal explicitly does so. The PBA asserts that the Commission should find its proposal to be

mandatorily negotiable and then, if the proposal is accepted or awarded, the parties will have other forums to set forth the facts and merits of whether or not any or all of the 146 assignments require special skills and/or training.

The PBA also argues that since seniority-based shift assignments are mandatorily negotiable, adding the educational factor of college degrees should also be mandatorily negotiable. However, the PBA states that if the Commission determines that education is not an appropriate basis for shift selection, it will abandon that part of the formula and rely solely on seniority.

With respect to the claims that its proposal would result in chaos, the PBA cites the Sheriff's testimony in a pending unfair practice proceeding, where the Sheriff stated that no officer was immune from transfer; that he had transferred between 100 and 200 officers in the first two years of his administration; and that he believed in transfers as a means of affording officers an opportunity to perform in new areas.

The employer responds that Asbury Park and related cases hold that assignments which require special qualifications, skills or training are not subject to shift bidding clauses. It maintains that the PBA proposal is not mandatorily negotiable because it includes positions which the Sheriff claims require special qualifications and that, at a minimum, the Commission should rule on that point after holding a plenary hearing.

The employer also takes issue with the PBA's characterization of the Sheriff's testimony in the unfair practice proceeding. While it acknowledges that the Sheriff maintains a policy of frequent transfers, it notes that the transcript submitted by the PBA indicates that the Sheriff has transferred 15 to 30 officers at one time, while the PBA proposal could result in as many as 146 transfers at any one time.

Paterson outlines the steps of a scope of negotiations analysis for cases involving police and firefighters. The Court stated:

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 fire fighters, 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 fire fighters, 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]

We consider only whether the proposal is mandatorily negotiable. Our policy is not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire employees are permissively negotiable, since the employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. West New York. Preemption is not an issue so we focus on balancing the interests of the employees and the employer given the record before us.

Two principles are pertinent to this dispute. The first is that 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 Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994); Asbury Park; contrast Borough of Highland Park, P.E.R.C. No. 95-22, 20 NJPER 390 (¶25196 1994) (clauses that base shift assignment solely on seniority are not mandatorily negotiable). The second principle is that public employers have a non-negotiable prerogative to assign employees to particular jobs 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 these principles must be assessed on a case-by-case basis by focusing 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. Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998). See also In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998). Both principles are implicated here, where the PBA proposal that officers bid for their preferred shift based on seniority and educational degrees would also affect which assignments officers would receive.

We start by reviewing our cases concerning shift bidding by seniority and then discuss that aspect of the PBA proposal pertaining to credit for college courses.

In some of our cases finding shift bidding clauses to be mandatorily negotiable, the relevant clauses exempted "duty assignments" such as "Detective Bureau, Traffic, etc." Asbury Park; see also Carteret; Middlesex. The clauses thus provided for bidding for different shifts within the same position or title -- sergeant, patrol officer, detective -- and there was no indication that the duties for any of the positions varied significantly from shift to shift. We found the clauses to be mandatorily negotiable, noting that they expressly preserved management's right to deviate from seniority when necessary to train employees or use their specialized abilities on a particular shift.^{2/}

^{2/} While the PBA states that its proposal is similar to that in Asbury Park, there is a fundamental difference. The PBA proposal defines "shift" to include "general assignment within a shift," language absent from the Asbury Park clause.

Other of our cases have involved claims that shift bidding clauses should have been used to determine both an assignment and a shift. In the companion cases of City of Elizabeth, P.E.R.C. No. 2000-15, 25 NJPER ____ (¶ ____ 1999) and City of Elizabeth, P.E.R.C. No. 2000-16, 25 NJPER ____ (¶ ____ 1999), we restrained arbitration of grievances contending that the City had violated contract clauses providing for shift scheduling by seniority when it selected officers for a special task force on a non-seniority basis and directed that the task force operate on a particular shift. The City asserted that the task force officers performed duties different from those of other officers and stated that they had been selected because of particular skills and qualifications. We reiterated the principle that an employer has a prerogative to match the best qualified employees to particular positions and reasoned that an arbitrator could not second-guess those assessments. We therefore restrained arbitration to the extent the grievances contested the creation and staffing of the task force. See also New Jersey Transit Corp., P.E.R.C. No. 97-127, 23 NJPER 304 (¶ 28139 1997).

In Mercer Cty. Sheriff, we found at least permissively negotiable, and therefore legally arbitrable, a grievance alleging that an employer had violated a shift bidding clause when it reassigned two sheriffs' officers from airport security (one of several assignments within the department) to different shifts and assignments. The union asserted that the employer had agreed to

permit officers to choose shifts based on seniority before assignments were given out, provided department needs were met. We assumed for the purpose of analysis that such an agreement existed. We held that the union could seek to enforce the alleged agreement in arbitration where the employer did not suggest that qualifications, problems or any other managerial reason had prompted the challenged shift changes.

The PBA represents employees performing a wide range of duties in the department, including arms instruction, serving warrants, and processing eviction foreclosures and execution sales. Based on the Sheriff's certification, we believe that the employer has shown that it requires special training, experience or other qualifications for all but two of the positions described in that document.^{3/} We hold that, with respect to all but two of those positions, the clause would interfere with the employer's prerogative to match the best qualified employees to particular assignments. City of Elizabeth, P.E.R.C. No. 2000-15; City of Elizabeth, P.E.R.C. No. 2000-16; New Jersey Transit Corp., P.E.R.C. No. 97-127. Stated another way, the PBA has proposed a shift bidding clause that would apply to a range of assignments for which the qualifications are not equal. Contrast Asbury Park. Therefore,

^{3/} For that reason, we need not hold a plenary hearing to determine the qualifications for these positions. Further, given the employer's submissions, we disagree with the PBA that disputes over the qualifications for these positions should be resolved in another forum. Mercer Cty.

with respect to most of the positions described in the Sheriff's certification, the necessary predicate for finding a shift bidding clause mandatorily negotiable is not present.

We except two positions described in the sheriff's certification from this conclusion: the sheriff's officer positions in the Jury Management and Record units. The Sheriff's statement that continuity is important in these units is not sufficient to establish that the proposal would significantly interfere with the governmental policy goal of matching the best qualified employees with particular assignments.

The PBA argues that, as in Asbury Park and related decisions, its proposal would allow the employer to deviate from seniority for training purposes or to assign employees with specialized skills. However, unlike those cases, this employer has shown that particular qualifications will always be needed for certain assignments. In this posture, we hold that the proposal is not mandatorily negotiable with respect to assignment to those positions. See Mercer Cty. (negotiability of shift bidding clauses will be assessed based on the record presented to us).

Our analysis is not altered by the fact that the Sheriff often transfers officers. A transfer is ordinarily made based on an assessment of an officer's qualifications for an assignment. But the PBA proposes that shifts, and assignments within a shift, would ordinarily be made based on seniority and education, even with

respect to certain assignments that the employer has determined require special training, experience, qualifications or skills.

However, we find that the proposal is mandatorily negotiable to the extent it proposes a bid system based on seniority and education for the Record and Jury Management positions; the approximately 80 assignments in the Hall of Justice and Transportation Units; and among employees in units with more than one shift. While the employer argues that application of the PBA proposal to these assignments and shifts would hamper cross-training and make it difficult to maintain an appropriate mix of experienced and less experienced personnel, the record does not demonstrate that the proposal would inevitably cause such problems, and the proposal recognizes the employer's right to deviate from the bidding system when necessary for training purposes, to assign an employee with specialized skills, or to meet the safety needs of the public.

Asbury Park. The employer can present its concerns to the interest arbitrator, just as the PBA can argue that, because of diverse shift preferences, the proposal would not impair the department.

With respect to the education component of the proposal, the employer makes no particularized arguments against this part of the clause. A bid system that would, among equally qualified employees, assign some points for education degrees in law enforcement would not significantly interfere with any governmental policy goals, given that the PBA's proposal preserves management's right to deviate from the bid system where necessary for training purposes or to assign employees with specialized skills.


ORDER

As revised by the PBA in its brief, the proposal to amend Article XX, Section 2(a) is mandatorily negotiable and may be submitted to interest arbitration.

The PBA proposal to add a new Section 8 to Article XX is mandatorily negotiable, and may be submitted to interest arbitration, except to the extent that it would require binding arbitration of major discipline arising out of alleged violation of the Attorney General's Internal Policy and Procedures Guidelines.

The PBA proposal to amend Article XIII is not mandatorily negotiable to the extent it would pertain to the assignments described in the Sheriff's certification, other than the Jury Management and Records assignments and among employees in units with more than one shift. It is otherwise mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn and Ricci voted in favor of this decision. Commissioner Madonna abstained from consideration. Commissioner Muscato was not present.

DATED: September 30, 1999
Trenton, New Jersey
ISSUED: October 1, 1999