

P.E.R.C. NO. 86-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE,

Petitioner,

-and-

Docket No. SN-85-103

EAST ORANGE PBA/SOA Local 16,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which East Orange PBA/SOA Local 16 filed against the City of East Orange. The grievance alleges the City violated its agreement with Local 16 when it reassigned a police officer from a day to night shift. The Commission holds that the change in shift was made to improve department operations and therefore is not arbitrable.

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Appearances:

For the Petitioner, Green & Dzwileski, P.A.
(Paul H. Green, Of Counsel)

For the Respondent, Carridi & Garcia, Esqs.
(Anthony J. Cariddi, Of Counsel)

DECISION AND ORDER

On May 28, 1985, the City of East Orange ("City") filed a Petition for Scope of Negotiations Determination. The City seeks a restraint of binding arbitration of a grievance which P.B.A./S.O.A. Local #16 ("Local 16") filed. The grievance alleges that the City violated its collective negotiations agreement with Local 16 when, effective July 1, 1984, it reassigned Captain John Armeno from a day shift to a night shift.

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

Local 16 is the majority representative of the City's supervisory police officers (i.e. sergeants, lieutenants and captains). The parties have entered a collective negotiations

agreement effective from January 1, 1984 through December 31, 1985. The agreement's grievance procedure ends in binding arbitration.

On June 22, 1984, Chief of Police George J. Daher issued Personnel Order #84-4 which changed the assignments of eight police captains including the grievant. These reassignments were designed to improve department operations. On June 28, 1984, Local 16 filed grievance #84-3 on Armeno's behalf alleging that his reassignment was punitive. The grievance alleges that prior to July 1, 1984, assignments of superior officers to the night shift were punitive or were the initial assignment of a newly assigned or recently promoted superior officer. The grievance was denied and Local 16 filed a demand for arbitration.^{1/} This petition ensued.

In Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) ("Paterson"), our Supreme Court outlined the steps of a scope of negotiations analysis for police and firefighters.^{2/} The Court stated:

First, it must be determined whether the particular item in dispute is controlled by a

^{1/} The City also submitted a copy of a second grievance filed by Armeno (No. 84-4) which grieved alleged harassment in retaliation for Armeno's displeasure with his change in assignment. We assume this document was submitted for purposes of background information. The petition seeks a restraint only of the grievance challenging the reassignment so we will not rule upon the negotiability of the second grievance.

^{2/} The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as a mandatory category of negotiations. Compare, IFPTE, Local 195 v. State, 88 N.J. 393 (1982) ("Local 195").

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.

(Id at 92-93, citations omitted)

In Kearny PBA Local 21, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13282 1982), we restrained arbitration of a grievance challenging the reassignment of a police sergeant as the night commander of the Town's detective bureau. We relied upon Local 195 which held that decisions to transfer and reassign State employees were non-negotiable. The Court stated:

...[t]he substantive decision to transfer or reassign an employee is preeminently a policy determination. The power of the employer to make the policy decision would be significantly hampered by having to proceed through negotiation.
88 N.J. at 417.

Given this observation, we believe that negotiations over the substantive decision to transfer public safety personnel (where

that decision was made to improve department operations) would substantially limit governmental policy. Further, while N.J.S.A. 34:13A-5.3 permits binding arbitration of disciplinary disputes in the absence of an alternate statutory appeal procedure to resolve that dispute, Local 16's allegation that this reassignment was disciplinary is based upon the grievant's bare assertion that shift transfers and reassignments have, in the past, been made for punitive reasons. Here, however, the City asserts that Armeno's reassignment (which was one of a group of simultaneous transfers) was made to improve departmental operations.^{3/} Moreover, Local 16 has not shown that this transfer was a demotion or was accompanied by any other indicia of disciplinary action. Accordingly, the decision to transfer Armeno is not arbitrable.

ORDER

The City's request for a permanent restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was opposed.

DATED: Trenton, New Jersey
November 18, 1985
ISSUED: November 19, 1985

^{3/} The Board of Police Commissioners, responding to the grievance in a letter dated Septmeber 12, 1984, noted that several improvements in the operations of the night shift had occurred after Armeno's reassignment.