

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(OFFICE OF EMPLOYEE RELATIONS),

Petitioner,

-and-

Docket No. SN-91-100

STATE TROOPERS FRATERNAL  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of grievances filed by the State Troopers Fraternal Association and individual state troopers against the State of New Jersey (Office of Employee Relations). The grievances assert that the State violated its collective negotiations agreement by transferring troopers involuntarily from specialist positions to road patrol positions. The Commission finds that the substantive decision to transfer or reassign an employee is generally neither negotiable nor arbitrable.

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Appearances:

For the Petitioner, Robert J. Del Tufo, Attorney General  
(Melvin E. Mounts, Deputy Attorney General)

For the Respondent, Loccke & Correia, attorneys  
(Michael J. Rappa, of counsel)

DECISION AND ORDER

On June 27, 1991, the State of New Jersey (Office of Employee Relations) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of one grievance filed by the State Troopers Fraternal Association ("STFA") and three grievances filed by individual State troopers. All the grievances assert that the State violated its collective negotiations agreement by transferring troopers involuntarily from specialist positions to road patrol positions.

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

The STFA represents all troopers in the Division of State Police except sergeants and higher ranks. The parties' contract

contains a grievance procedure ending in binding arbitration of contractual disputes.

On May 25, 1988, the STFA filed a grievance asserting this claim:

involuntary transfer of any/all bargaining unit personnel from Education Services Unit [("ESU")] assignments in Troops A, B and C [is] arbitrary/capricious and violative of the existing agreement, specifically, Article IX "Specialist Selection," Article XXV "Complete Agreement" (Para. 3), and Article XXVI "Non-Discrimination."

The grievance sought this relief:

Recision of orders involuntarily transferring bargaining unit personnel from ESU assignments in Troops A, B and C and reassignment of said personnel to their former ESU details. Posted criteria in applying for future available ESU positions to specify time-frame of assignment.

On June 20, 1988, the Superintendent, accepting a designee's findings, denied the grievance. The STFA had contended before the designee that troopers who accepted an ESU position had made a career move and should not be involuntarily transferred back to patrol; there had never been any such involuntary transfers; only five of fifteen ESU troopers had been transferred back to patrol and those transfers had not been based upon seniority; and the duration of an ESU assignment should be made known to ESU applicants. The designee found that the Superintendent had a contractual right to transfer troopers; all troopers assigned to headquarters were specialists and were subject to transfer; many troopers in specialist positions had been involuntarily transferred back to

patrol; while all ESU troopers would eventually be transferred back to patrol, it was impossible to transfer all experienced troopers at the same time; and if a time period for ESU assignments were to be established, it should be announced.

On January 31, 1989, Trooper Mario Terruso filed an individual grievance contesting his transfer from an ESU position in Troop A to road patrol. His grievance raised the same points as the STFA's grievance, but added an allegation that he had been discriminated against because of his STFA activities and because his jokes and conversations had been misunderstood. The grievance sought rescission of the transfer.

On July 13, 1989, the Superintendent, accepting his designee's findings, denied Terruso's grievance. The designee found that the article on specialist selections did not apply to transfers and that no evidence supported a claim of discrimination.

On October 15, 1990, Trooper Brian Zelenak filed an individual grievance contesting his transfer from the Troop C Truck Enforcement Unit to the Troop C Wilburtha station. The grievance asserted that the transfer was arbitrary and capricious and violative of the contract clauses cited in the STFA's grievance. The grievance sought rescission of the transfer.<sup>1/</sup>

On December 12, 1990, the Superintendent, accepting his designee's findings, denied this grievance. The designee found that

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<sup>1/</sup> The grievance's other allegations are not material to this petition.

the transfer was made to balance the squads within Troop C and that Zelenak had requested a transfer to the Wilburtha station.

On February 15, 1991, Trooper Charles Bianco filed a grievance contesting his transfer from the Aviation Unit to Troop C Field Operations. The grievance asserted that the transfer was arbitrary and capricious and violative of the contract clauses cited in the STFA's grievance. The grievance sought rescission of the transfer.

On March 8, 1991, the Superintendent denied this grievance. He found that the transfer was made to meet the division's operational needs.

The STFA demanded binding arbitration of the four grievances. This petition ensued.

The State asserts that the grievances are not negotiable or arbitrable because the Superintendent has a managerial prerogative to transfer sworn personnel to meet operational needs. The STFA responds that troopers had never before been involuntarily transferred from specialist positions to road patrol and that this change in transfer policy is negotiable. It also notes that the Terruso grievance claims discrimination.

Our jurisdiction is narrow. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (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. [78 N.J. at 154]

We do not consider the contractual merits of the grievance or any defenses the employer may have.

The substantive decision to transfer or reassign an employee is generally neither negotiable nor arbitrable. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; City of Millville, P.E.R.C. No. 90-117, 16 NJPER 391 (¶21161 1990); City of Garfield, P.E.R.C. No. 90-106, 16 NJPER 318 (¶21131 1990); Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of E. Orange, P.E.R.C. No. 86-70, 12 NJPER 19 (¶17006 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982); see also City of Atlantic City, P.E.R.C. No. 87-161, 13 NJPER 586 (¶18218 1987); Oakland Bor., P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985); Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985). Applying these precedents, we will restrain binding arbitration over the decisions to transfer employees from specialist positions to road patrol positions.<sup>2/</sup>


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2/ A claim that a transfer was discriminatory does not transform a non-negotiable transfer decision into a negotiable subject. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); Garfield.

ORDER

The request of the State of New Jersey (Office of Employee Relations) for a restraint of binding arbitration of the STFA, Terruso, Zelenak, and Bianco grievances contesting the decisions to transfer troopers from specialist positions to road patrol positions is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioner Bertolino abstained.

DATED: October 17, 1991  
Trenton, New Jersey  
ISSUED: October 18, 1991