

P.E.R.C. NO. 2001-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Petitioner,

-and-

Docket No. SN-2000-111

P.B.A. LOCAL 98,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Borough of Sayreville for a restraint of binding arbitration of a grievance filed by P.B.A. Local 98. The grievance contests the transfer of a captain from the detective division to the administrative division. The Commission concludes that even if motivated by ill will, the grievance is not arbitrable. However, an arbitrator can consider the procedural allegations that proper notice and an opportunity to bid on vacant positions were not given.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Robert J. Merryman, on the brief)

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

DECISION

On June 21, 2000, the Borough of Sayreville petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 98. The grievance contests the transfer of a captain from the detective division to the administrative division.

The parties have filed briefs and exhibits. The Borough has filed a certification of the police chief. These facts appear.

The PBA represents captains and deputy chiefs. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1997 through December 31, 1999. The grievance procedure ends in binding arbitration.

On September 1, 1999, the Borough Council passed an ordinance to reorganize the police department. As part of that

reorganization, the Administrative Division was created and an additional captain position and two lieutenant positions were added to the table of organization. Before the reorganization, there were two captains. Edward Szkodny was the captain in charge of the Uniform Division and William Gawron was the captain in charge of the Detective Division. The creation of the third captain position, to be in charge of the new Administrative Division, necessitated promoting a lieutenant to the rank of captain. Lieutenant Richard Zdan was promoted to captain and assigned to the Uniform Division. Captain Szkodny, who had headed the Uniform Division, was reassigned to the Detective Division, and Captain Gawron was reassigned to the Administrative Division, effective November 1, 1999.

On October 26, 1999, the PBA filed a grievance contesting Gawron's reassignment. The section entitled "Nature of the Grievance" states:

After being notified by the Chief of Police that the grievant was being transferred out of the position of Detective Bureau Commander to a newly created position in the Administration Bureau, the grievant claims that through this action the Borough of Sayreville and its Chief of Police have violated Article II, sections A and B; Article VIII, section A; Article XVI, section L; Article XVIII, section A of the Labor Agreement and violated sections 103, 108, 205, 381, 703 and 881 of the Employee Handbook. Remedy sought is to remain in current position, or be promoted to the rank of Deputy Chief.

The chief denied the grievance, claiming a prerogative to reassign Gawron because he is the best qualified captain to fill

the new captain position in the Administrative Division. In his certification, the chief states that Gawron, while head of the Detective Division, worked on two major technical upgrade projects involving the purchase and installation of a new radio and dispatch system and the installation of a new computer system. The chief states that the Administrative Division oversees telecommunications, data processing and police records and that Gawron's work with the radio, dispatch and computer systems and his knowledge of technology made him the best qualified captain to oversee that division.

On May 2, 2000, the Mayor and Council denied the grievance. They concluded that Gawron was transferred to the Administrative Division because of his abilities and experience, consistent with his job classification, and in accordance with its managerial prerogatives to make transfers.

On May 22, 2000, the PBA demanded arbitration. It asserted that Gawron's reassignment violated the parties' agreement, was made without proper notification and with bias, and caused a loss in pay. This petition ensued.

The PBA asserts that Gawron's reassignment was made because of "ill will" between the chief and Gawron. The PBA contends that an arbitrator should be able to determine whether the alleged ill will between the chief and Gawron was the reason for the reassignment rather than the Borough's managerial prerogative to make assignments based on qualifications. The PBA

also asserts that as captain of the Detective Division, Gawron earned an additional \$400.00 which he has lost because of the reassignment to the Administrative Division. It cites several sections of the Borough's Employee Handbook and several contract provisions it believes were violated, including a contract provision that affords captains and the deputy chief the right to bid on vacant positions.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Bd. of Ed., 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. [Id. at 154].

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the City may have.

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. City of 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.... 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 policy-making 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.


Even if this transfer was motivated by ill will, the substantive decision to transfer cannot be contested through binding arbitration. In Borough of New Milford, P.E.R.C. No.99-43, 25 NJPER 8 (¶30002 1998), we restrained arbitration over an allegedly disciplinary transfer of a police

officer from the detective bureau to patrol. New Milford controls this case to the extent the grievance contests the decision to reassign Gawron.^{1/} However, an arbitrator can consider the procedural allegations that proper notice and an opportunity to bid on vacant positions were not given.

ORDER

The request of the Borough of Sayreville for a restraint of binding arbitration is granted to the extent the grievance contests the decision to reassign William Gawron to the Administrative Division. The request is otherwise denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: October 30, 2000
Trenton, New Jersey
ISSUED: October 31, 2000

^{1/} In both New Milford and in this case, officers lost detective pay differentials. Where the loss of such differentials flows directly from the transfer or reassignment, a grievance contesting the personnel action is not arbitrable. See Borough of Oakland, P.E.R.C. No. 86-58, 11 NJPER 713 (¶16248 1985).