

P.E.R.C. NO. 2001-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Petitioner,

-and-

Docket No. SN-2001-19

WEST ORANGE P.B.A. LOCAL NO. 25,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of West Orange for a restraint of binding arbitration of a grievance filed by West Orange P.B.A. Local No. 25. The grievance contests the unilateral implementation of a Traffic Code Enforcement Index, the adoption of a Career Development Program, and the reassignment of an officer from the midnight shift to the day shift. Inasmuch as the Traffic Code Enforcement Index has been rescinded and the PBA does not appear to be challenging the Township's right to establish the Career Development Program, the Commission does not issue rulings on those issues. The Commission holds that the allegation that the officer was transferred for disciplinary reasons must be restrained since police officers cannot arbitrate transfers, even if they are disciplinary.

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, Genova, Burns & Vernioia, attorneys
(Robert C. Gifford, on the brief)

For the Respondent, Klatsky & Klatsky, attorneys
(David J. DeFillippo, on the brief)

DECISION

On October 31, 2000, the Township of West Orange petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by West Orange P.B.A. Local No. 25. The grievance contests the unilateral implementation of a Traffic Code Enforcement Index, the adoption of a Career Development Program, and the reassignment of an officer from the midnight shift to the day shift.

The parties have filed briefs and exhibits. The Township has filed a certification of its police chief, James P. Abbott. The PBA has filed certifications of its president, Robert Verzi, and police officer Robert Palmere. These facts appear.

The PBA represents all police officers below the rank of sergeant. The Township and the PBA are parties to a collective

negotiations agreement effective from January 1, 1998 through December 31, 2001. The grievance procedure ends in binding arbitration.

On May 1, 2000, the chief of police issued Directive 8:6 - Traffic Enforcement. This directive outlined the police department's long-term and short-term goals regarding traffic enforcement. On May 5, the deputy police chief issued Special Order 2000-3 concerning traffic enforcement. The Order stated that patrol officers must issue no fewer than 6,853 summonses for hazardous moving violations per year. The Order warned that officers who did not achieve this required level of enforcement may be subject to progressive discipline. On December 12, then-Governor Whitman signed legislation prohibiting ticket quotas. The Township rescinded its traffic enforcement directive effective December 18.

In August 2000, the Township instituted a Career Development Plan to enhance officers' knowledge of the department's five main areas other than patrol. The five areas are administration, juvenile, detective, professional standards, and traffic. Each participating officer will spend three months in each of the areas. The chief believes this will give each officer well-rounded experience and increase knowledge of all operations. The chief considered officers with five to seven years of experience for the program since he believes that is a pivotal time for determining whether the officer has the skills and qualities demanded by the department for superior officers.

The Career Development Plan will help the police department obtain accreditation from the Commission on the Accreditation of Law Enforcement Agencies (CALEA). Accreditation can lead to reduced insurance premiums, fewer civilian complaints, and improved efficiency.

The patrol division works three shifts: day shift, evening shift, and midnight shift. Shift assignments have been based on seniority. For the last 1 1/2 to 2 years, the patrol division has worked steady shifts.

Officer David Palmere was hired in 1984 and was assigned to the patrol division where he worked a steady midnight shift. On August 28, 2000, Palmere became the first officer chosen for the Career Development Program. He was transferred to the Office of Professional Standards Division where he has worked in the juvenile bureau on a steady day shift. He was scheduled to remain there for three months and then be transferred to another of the five areas.

On August 16, 2000, the PBA filed a grievance contesting the Career Development Program and the involuntary change in officers' work hours and shifts. The grievance does not mention the traffic enforcement index.

On August 17, 2000, the chief denied the grievance as "ludicrous, absurd, arrogant and furthermore, it has no basis in law." He stated that under Title 40, management is empowered with the capability to assign all police personnel at its discretion.

On October 11, 2000, the PBA filed a request for arbitration. The request states that the implementation of the traffic enforcement index is contrary to public policy, as well as arbitrary, capricious and unreasonable. It also states that the creation of the Career Development Program and the arbitrary and capricious reassignment of Palmere from midnight to day shift violated the parties' past practice of assigning shifts by seniority. This petition ensued.

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

The scope of negotiations for police and fire employees 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. Compare Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981) with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson outlines the steps of a scope of negotiations analysis for police and fire fighters:

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]

The PBA argued to us that in light of the new law prohibiting ticket quotas and the Township's rescission of its order, the Commission must deny the Township's scope petition as it relates to the traffic enforcement index. The Township responded that since it has rescinded the traffic enforcement index order, that issue is moot. In light of the Township's position, we will not issue a ruling on this aspect of its petition.

The Township further asserted that it is within its managerial right to create a Career Development Program and to decide which officers are to be assigned to the program.

The PBA responded that the Township transferred Palmere to punish him and that it violated the parties' long-standing practice

of assigning work hours by seniority. The PBA asserts that the chief and deputy chief told the PBA president that they did not want Palmere to have steady shifts because he had an alleged attitude problem.

In its reply brief, the Township argues that under Borough of New Milford, P.E.R.C. No. 99-43, 25 NJPER 8 (¶30002 1998), disciplinary transfers of police officers cannot be submitted to binding arbitration. In a sur-reply, the PBA argues that we should deny the Township's request in light of City of Newark, P.E.R.C. No. 2001-37, 27 NJPER 46 (¶32023 2000), a case that permitted arbitration of a case involving the transfer of a police officer.

Arbitration over Palmere's alleged disciplinary reassignment must be restrained. New Milford held that, as enacted in 1982 and as construed in State Troopers Fraternal Ass'n v. State, 134 N.J. 393 (1993), the discipline amendment to N.J.S.A. 34:13A-5.3 did not apply to any disciplinary disputes involving police officers. The 1996 amendment to section 5.3 authorizes agreements to arbitrate minor disciplinary disputes, but that authorization does not extend to reassignments of police officers. Police officers who believe that they have been unjustly reassigned as a form of discipline must file an action in lieu of prerogative writ. Monmouth Cty. v. CWA, 300 N.J. Super. 272, 289 (App. Div. 1997).

City of Newark did not modify New Milford. City of Newark held that a union representing police officers transferred for disciplinary reasons could enforce a contractual requirement that

formal charges precede disciplinary transfers. Because the instant case does not present any issue of alleged violations of pre-disciplinary procedures, City of Newark is not relevant.^{1/}

ORDER

The request of the Township of West Orange for a restraint of binding arbitration over the claim that Patrol Officer Robert Palmere was reassigned for disciplinary reasons is granted.

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.

DATED: April 26, 2001
Trenton, New Jersey
ISSUED: April 27, 2001

^{1/} It does not appear that the PBA is challenging the Township's right to establish the Career Development Program and reassign police officers for other than disciplinary reasons. If the PBA does challenge that right, the Township may refile its petition and seek a ruling on that issue.