

P.E.R.C. NO. 2000-20

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-99-99

P.B.A. LOCAL 177, SOMERSET  
COUNTY CORRECTIONS OFFICERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Somerset County Sheriff for a restraint of binding arbitration of a grievance filed by P.B.A. Local 177, Somerset County Corrections Officers. The grievance asserts that the Sheriff violated the parties' collective negotiations agreement by denying two female corrections officers their preferred shifts and regular days off and permitting less senior male officers to choose those shifts and days off. The Commission grants a restraint to the extent the grievance, if sustained, would compromise the Sheriff's right to have at least one female correction officer on every shift. The request for a restraint is otherwise denied.

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, Stanton, Hughes, Diana, Salsberg,  
Cerra & Mariani, P.C., attorneys (Matthew J. Giacobbe, on  
the brief)

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

DECISION

On June 16, 1999, the Somerset County Sheriff petitioned for a scope of negotiations determination. The petition seeks a restraint of binding arbitration of grievances filed by P.B.A. Local 177, Somerset County Corrections Officers. The grievances assert that the Sheriff violated the parties' collective negotiations agreement by denying two female corrections officers their preferred shifts and regular days off (RDOs) and permitting less senior male officers to choose those shifts and days off.

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

The PBA represents corrections officers employed by the Sheriff. The Sheriff and the PBA are parties to a collective negotiations agreement that expired on December 31, 1997. Its grievance procedure ends in binding arbitration.

On February 26, 1998, the parties executed a Memorandum of Agreement which is to be incorporated into their new contract. The memorandum contains this seniority provision:

8. The employer agrees to implement a shift selection and days off annual bidding process. The following conditions shall be included:
  - a. The employer shall post a seniority list by Nov. 1 of the preceding year.
  - b. Seniority bidding shall commence Nov. 1.
  - c. Bids shall be in writing.
  - d. A new schedule shall be posted by Dec. 1 based on the bids.
  - e. The new schedule, which is the result of the seniority bidding process, shall be effective in the first week of Jan.
  - f. Seniority shall be defined as follows:
    - Officer's date of continuous employment as a Corrections Officer at Somerset County Jail.
    - Supervisors: Time in rank.
  - g. The employer shall have the right to deviate from the procedure in special needs circumstances, including, but not limited to, ensuring appropriate staffing levels.

There are 270 inmates in the Somerset County jail, 40 of whom are female. The Sheriff employs 106 corrections officers, 13

of whom are female. Corrections officers work three shifts: 8:00 a.m. to 4:00 p.m., 4:00 p.m. to midnight, and midnight to 8:00 a.m.

Kendall Street and Tracy Teut are corrections officers working at the Somerset County jail. On November 17, 1998, they filed grievances with Warden Vandergoot asserting that the seniority provision in the memorandum of agreement was being violated by giving male corrections officers more favorable treatment than female officers with more seniority.

Street's grievance states, in part:

I am grieving my assignment of RDOs on the 8-4 shift for the year of 1999. I was assigned Tuesday and Wednesday as my RDOs. This choice of days off was my seventh preference. Officers with less seniority than myself were given RDOs that I selected as higher preferences than the one I was assigned to, specifically Monday-Tuesday, Thursday-Friday, and Wednesday-Thursday. This is in violation of Article XXIX of the memorandum of agreement signed February 26, 1998. In this article, seniority for officers is defined as "date of continuous employment as a Correction Officer at the Somerset County Jail." The seniority list that was posted, as per the agreement, lists all officers according to their seniority status, regardless of whether they are male or female.

With this grievance, I wish to be assigned to my RDOs on the 8-4 shift as they fall within my proper seniority preference. Since only one female is required minimally on each shift, this would in no way cause any type of staffing problems, as there would be a minimum of two females scheduled each day.

Teut's grievance states, in part:

1) Female officers are assigned to shifts and RDOs separate from the male officers. There should be one seniority list without preference to gender.

2) Female officers are assigned to shifts, regardless of their seniority within the jail. This causes junior male officers, with less experience working the desirable 8-4 shift. Female officers with more experience are stuck on the least desirable shift, 4-12.

3) According to the list of available days off, female officers are limited in their choices. Female officers are not given the full choice of days off that male officers are. On the 8-4 shift, Monday-Tuesday is not offered as a possible combination of days off for females. On the 4-12 shift, Thursday-Friday is not offered, yet the more undesirable days of Wednesday-Thursday are given to two female officers. On the 12-8 shift, neither Monday-Tuesday or Thursday-Friday is given as an option to female officers. Yet, male officers are given the opportunity to choose and be assigned to all possible combinations. By limiting the choice of RDO's for females, less senior male officers are receiving the preferential days off.

With this grievance, I want one seniority list without gender bias. Female officers should have the same opportunity as their male counterparts. This can be done without sacrificing proper staffing levels....

On November 30, 1998, Warden Vandergoot denied both grievances. He wrote:

I am denying your grievance...based on the staffing needs of the Somerset County Jail. N.J.A.C. 10A:31.8.5 specifically states that "a strip search shall be conducted by the custody staff of the same sex as the inmate." This requires that a minimum of one female officer be on duty per shift. There are more female officers on the day and afternoon shifts due to

the movement requirements of female inmates. Additionally I have to take into account that there are vacation days, sick leave, and holidays that are taken.

On December 8, 1998, Sheriff Robert Lund denied the grievances. On January 4, 1999, the PBA demanded arbitration. Its demand describes the issue to be arbitrated this way: "The PBA and their female member officers assert that Employer was discriminatory and violated the collective bargaining agreement by failing to permit shift selection by seniority." This petition ensued.

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. 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. [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. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is mandatorily or 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 policymaking powers.

In City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994), we discussed the negotiability of contract proposals making seniority a factor in shift assignments. We stated that "public employers and majority representatives may agree that seniority can be a factor in shift assignment where all qualifications are equal and managerial prerogatives are not otherwise compromised." Id. at 393. However, "contract proposals requiring seniority bidding must preserve management's right to deviate from a seniority system when necessary to accomplish a governmental policy goal -- for example, seniority bidding cannot compromise management's power to assign employees with special qualifications to special tasks, determine that employees with certain abilities perform better on certain shifts, train

employees, strengthen supervision, determine staffing levels, or respond to emergencies." Id. at 394. We also stated that "[t]he interplay between seniority as a basis for choosing shift assignments and managerial needs as a basis for exceptions must be assessed case-by-case. The assessment in each case must focus on the specific wording of a contract proposal or the specific nature of an arbitration dispute given the specific facts in the record and the specific arguments presented to us." Ibid.

Consistent with Hoboken, the parties have negotiated a clause that recognizes management's right to deviate from the seniority bidding system to ensure that "appropriate staffing levels" are met. Our jurisdiction does not extend to deciding whether the Sheriff had a contractual right to deny the shift and days off requested by Teut and Street. Ridgefield Park Ed. Ass'n v. Ridgefield Bd. of Ed., 78 N.J. 144, 154 (1978). An arbitrator must make that determination. But the Sheriff's obligation to comply with statutory and regulatory requirements pertinent to shift assignments must be recognized. N.J.S.A. 30:8-12 requires that the Sheriff "appoint one or more female guard or guards over such female prisoners at all hours during the night." That requirement applies to two shifts in this case. And, absent an emergency, strip searches must be conducted by a guard of the same sex as the prisoner. N.J.A.C. 10A:3-5.7; N.J.A.C. 10A:31-8.5(e); N.J.A.C. 10A:31-21.2. In light of these requirements, the employer had a right to determine that it needed to have at least

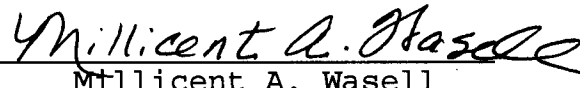


one female correction officer assigned to every shift. But these requirements do not entitle it to have additional female officers on every shift as well. Compare Pequannock Tp. Bd. of Ed., P.E.R.C. No. 91-116, 17 NJPER 339 (¶22151 1991) (employer had prerogative to have one custodian with black seal license on overtime detail, but not two custodians). It is true that the employer will have an occasional need to replace the regularly assigned female officers, but governmental policymaking powers would not be substantially limited if it agreed to do so through overtime assignments or temporary shift changes. See Borough of Garwood, P.E.R.C. No. 90-50, 16 NJPER 11 (¶21006 1989).

ORDER

The request of the Somerset County Sheriff for a restraint of arbitration is granted to the extent the grievances, if sustained, would compromise the Sheriff's right to have at least one female correction officer on every shift. The request for a restraint of arbitration is otherwise denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners McGlynn, Muscato and Ricci voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Madonna abstained from consideration under protest.

DATED: August 26, 1999  
Trenton, New Jersey  
ISSUED: August 27, 1999