

I.R. NO. 93-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-93-27

IAFF LOCAL 1064,

Respondent.

SYNOPSIS

The City of Jersey City sought to restrain an of arbitration brought by IAFF Local 1064. The arbitration concerns a grievance alleging that the City violated the contract when it began using non-supervisory firefighters as acting captains. The IAFF argued that its contract requires the City to first seek to use superior officers as substitutes for captains rather than non-supervisory firefighters. Since the disputed assignments are temporary and routine, and the qualifications of the employees so assigned are not in issue, there is a substantial likelihood that the Commission will find the assignments are permissible subjects of negotiation and that the issue is arbitrable.

The Application for Interim Relief was denied.

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Appearances:

For the Petitioner
Gerald L. Dorf, of counsel

For the Respondent
Picco Mack Herbert Kennedy Jaffe & Yoskin, attorneys
(Michael J. Herbert, of counsel)

INTERLOCUTORY DECISION

This action was instituted by the City of Jersey City. It seeks an interim restraint of an arbitration brought by the IAFF Local 1064, pending a final Commission decision. The IAFF represents uniformed employees of the City's fire department above the rank of firefighter.

The IAFF grievance, which is the subject of the arbitration, alleges that the City violated its collective negotiations agreement when it began using non-supervisory firefighters as acting captains in the absence of regularly scheduled fire captains. The IAFF argues that its contract requires the City to first seek to use superior officers as substitute for

captains.

The City argues that it has a non-arbitrable managerial prerogative to assign firefighters in the interests of economy and efficiency.

Here, the disputed assignments are temporary and routine and the qualifications of the employees so assigned are not in issue. I am confident the Commission will find that the assignments in question are at least permissible subjects of negotiation and, therefore the issue is arbitrable. Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1979).

The City further argues that the assignments are not negotiable because they are pre-empted by N.J.S.A. 40A:14-7 which provides:

"the governing body shall...prescribe their powers, function and duties..."

The City argues that this provision controls or fixes the authority of the City to make assignments and, therefore preempts any contractual provision limiting the City's authority to assign. However, for a statute to preempt negotiations, the statute must comprehensively fix the specific term or condition of employment and leave nothing in the discretion of the employer. State v. State Supervisory Employees Association, 78 N.J. 54 (1978); Council of New Jersey State College Locals v. State Board of Higher Ed., 91 N.J. 18 (1982). Here the statute does not comprehensively fix terms and condition of employment. This matter is not preempted by statute.

Finally, the City argues that even if the Commission was to

find this issue to be permissively negotiable, the contract does not address the issue in dispute.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park 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.

Thus, we do not consider the merits of the grievance, the Board's contractual defenses, or the Association's response to those defenses.

Accordingly, the City has failed to demonstrate it has a substantial likelihood of success in prevailing before the Commission. The Application for an interim restraint of arbitration is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: November 19, 1992
Trenton, New Jersey