

P.E.R.C. NO. 2009-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Petitioner,

-and-

Docket No. SN-2008-065

HOBOKEN MUNICIPAL EMPLOYEES
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Hoboken for a restraint of binding arbitration of a grievance filed by the Hoboken Municipal Employees Association. The grievance claims that a work assignment violated an employee's seniority. The Association has not asserted any basis to deviate from the case law holding that employers generally have a managerial prerogative to assign regular job duties during normal work hours and restrains arbitration.

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, David F. Corrigan, LLC, attorneys
(David F. Corrigan, of counsel; Bradley D. Tishman, on
the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky &
Bukosky, attorneys (Merick H. Limsky, on the brief)

DECISION

On April 9, 2008, the City of Hoboken petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Hoboken Municipal Employees Association. The grievance claims that a work assignment violated an employee's seniority. Recognizing that employers generally have a managerial prerogative to assign regular job duties during normal work hours, we restrain arbitration.

The parties have filed briefs. The City has filed the certification of Maintenance Supervisor Rick Repetti, the

grievance, and two job descriptions. These facts appear from the City's submissions.

Jose Rodriguez is employed by the City in the position "Building Maintenance Worker." The Department of Personnel job description for that position lists examples of work including cleaning bathrooms.

In September 2007, Rodriguez was assigned to clean bathrooms. On September 18, the Association filed a grievance on Rodriguez' behalf asserting that: "I am doing labor work with more seniority than other workers." Repetti's asserts that cleaning bathrooms is a normal task for maintenance workers and is in their job description. He returned the grievance without response and asserts that job duties are assigned as needed without regard for seniority.

On October 26, 2007, the Association demanded arbitration listing the dispute as "Jose Rodriguez, Seniority Grievance." This petition ensued.

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. [Id. at 154]

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

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The City maintains that cleaning bathrooms is a task that is assigned to building maintenance workers on an as needed basis and contained in their job description.

The Association argues that procedural provisions concerning assignments are mandatorily negotiable and that seniority is often considered when no special skills are required.

In general, public employers have a non-negotiable prerogative to assign some or all of the title's duties to employees in a job title. Borough of Hawthorne, P.E.R.C. No. 2004-33, 29 NJPER 513 (¶164 2003); see also Local 195; Ridgefield Park. The Association has not asserted any basis to deviate from the application of the negotiability balancing test found in those cases. The City asserts its interest in having bathrooms cleaned as needed. The Association has not asserted any employee interest in having this duty assigned by seniority.

The cases the Association cites, City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), Borough of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988), Camden Cty. Sheriff, P.E.R.C. No. 2004-46, 30 NJPER 33 (¶10 2004), recon. den. P.E.R.C. No. 2004-65, 30 NJPER 133 (¶50 2004), and Borough of Middlesex, P.E.R.C. No. 92-32, 17 NJPER 470 (¶22225 1991), all involved shift assignments, where because of the difference in work hours, the employees' interest is significantly greater than in regular assignments within a shift. The Association's assertion that procedures used for making assignments are negotiable is unavailing because in this case, the decision who will be assigned a particular task is predominately substantive, not procedural. Rutgers, the State Univ. and Rutgers Council of AAUP Chapters, 256 N.J. Super. 104, 118 (App. Div. 1992), aff'd 131 N.J. 118 (1993) (line between

substantive and procedural matter is sometimes indistinct, and giving a matter a particular label may not resolve the issue).

ORDER

The request of the City of Hoboken for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: September 25, 2008

Trenton, New Jersey