

P.E.R.C. NO. 2009-22

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BARNEGAT,

Petitioner,

-and-

Docket No. SN-2009-003

TEAMSTERS LOCAL NO. 35,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Barnegat for a restraint of binding arbitration of a grievance filed by Teamsters Local No. 35. The grievance alleges that the Township violated seniority provisions of the parties' collective negotiations agreement when, after it abolished the chief mechanic title, it refused to allow the holder of that position to exercise his seniority rights and "bump" into a lower title. The Commission holds that absent preemptive statutes or regulations, parties may negotiate provisions relating seniority to determinations of which satisfactory employees will be laid off, recalled, bumped or re-employed. The Commission holds that an arbitrator can determine whether this employee is entitled to the lower title.

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, Dasti, Murphy, McGuckin, Ulaky,  
Cherkos & Connors, P.C., attorneys  
(Christopher K. Koutsouris, on the brief)

For the Respondent, McNeill & Walker, attorneys  
(Nancy A. Walker, on the brief)

DECISION

On July 21, 2008, the Township of Barnegat petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Teamsters Local No. 35. The grievance alleges that the Township violated seniority provisions of the parties' contract when, after it abolished the chief mechanic title, it refused to allow the holder of that position to exercise his seniority rights and "bump" into a lower title. We find that arbitration is not preempted by any statute or regulation and that the grievance involves a mandatorily negotiable subject. We accordingly decline to restrain arbitration.

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

The Teamsters represents the Township's blue collar employees. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2006. The grievance procedure ends in binding arbitration. The agreement includes salary schedules with six steps for various positions including "Mechanic" and "Chief Mechanic."

Article 7 of the parties' contract, entitled Seniority, provides:

A. Seniority shall be considered for purposes of scheduling vacations and personal leave and shall be a consideration if a job opening within the Township should occur but shall not be the sole determining criteria. Seniority will also be considered for job assignments within an employee's job classification, but shall not be the sole determining criteria.

B. Should the Township decide to reduce the number of employees in any particular job title/category, the Township will do so on the basis of employee seniority within each job title/category.

C. Employees shall be recalled for work from layoff in the order of the seniority, provided that they, in the sole discretion of the Township, have the requisite qualifications and ability to perform the work available.

Article 30 is entitled Management Rights. It provides, that the Township has the right:

- C. To layoff employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and non-productive.

On or about May 30, 2008, the title of chief mechanic within the Public Works Department was abolished. The Township notified Jim Bennett, the individual in the position at the time, that his employment with the Township would be discontinued.

On June 5, 2008, Bennett filed a grievance alleging that he was denied his "bumping right and/or seniority rights for the Division of Fleet Maintenance."

On June 10, 2008, the Teamsters demanded arbitration stating that the issue in dispute "is whether the Township of Barnegat violated the seniority provisions (Article 7; Seniority) set forth in the parties' collective bargaining agreement by failing to offer seniority and/or bumping rights in the Division of Fleet Management to Mechanic Jim M. Bennett." 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.

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

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

[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]

No statute or regulation is alleged to preempt arbitration.

The Township argues that it has a managerial prerogative to abolish positions for reasons of economy and efficiency.

Local 35 responds that seniority provisions are mandatorily negotiable and whether Bennett was denied other available positions based on his seniority is legally arbitrable.

The Township raises several contractual defenses in its reply. It asserts that the layoff of employees for reasons of

economy and efficiency is a matter the parties specifically agreed would not be subject to arbitration. The reply does not address the negotiability or legal arbitrability of seniority and bumping rights.

Absent preemptive statutes or regulations, parties may negotiate provisions relating seniority to determinations of which satisfactory employees will be laid off, recalled, bumped or re-employed. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 84 (1978); South Brunswick Tp., P.E.R.C. No. 97-29, 22 NJPER 368 (¶27193 1996) (denying restraint of arbitration over alleged bumping rights to position for which grievant was qualified; granting restraint as to positions for which grievant was not qualified). Here, the grievant served as the Township's chief mechanic. His qualifications to bump into the lower title mechanic are unchallenged. The arbitrator can determine whether Bennett is entitled to that position. The Township's contractual defenses are for the arbitrator, not us, to consider. Ridgefield Park.

ORDER

The request of the Township of Barnegat for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: October 30, 2008

Trenton, New Jersey