

P.E.R.C. NO. 2011-24

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BRIDGETON,

Petitioner,

-and-

Docket No. SN-2010-043

CUMBERLAND COUNCIL 18,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Bridgeton for a restraint of binding arbitration of a grievance filed by Cumberland Council 18. The grievance asserts that an employee did not receive additional compensation when her appointment to Supervising Code Enforcement Officer became permanent through the Civil Service Commission. The Commission holds that the subject matter of the grievance is mandatorily negotiable and not preempted by N.J.S.A. 52:27D-188.30(a).

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, Gruccio, Pepper, DeSanto & Ruth,  
P.A. attorneys (Shant H. Zakarian, of counsel)

For the Respondent, O'Brien, Belland & Bushinsky, LLC,  
attorneys (Mark E. Belland and Kathryn H. Acosta, of  
counsel)

DECISION

On November 19, 2009, the City of Bridgeton petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Cumberland Council 18. The grievance asserts that an employee did not receive additional compensation when her appointment to Supervising Code Enforcement Officer became permanent through Civil Service. We deny the City's request for a restraint.

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

Council 18 is the exclusive representative of all permanent clerical and other employees of the City. The City and Council

18 are parties to a collective negotiations agreement effective from July 1, 2008 to June 30, 2011. The grievance procedure ends in binding arbitration.

On August 7, 2009, Council 18 filed a grievance that included the following statement from the affected employee:

the City has failed to implement a salary increase when I was promoted to the position of Supervisor of Division of Housing and Code Enforcement.

Specifically, I was promised a salary increase by the City upon my designation as permanent Supervisor of Housing and Code Enforcement. The failure of the city to provide an increase is a violation of the express and implied provisions of the Collective Negotiations Agreement as well as past practice. This action is also a violation of the express representatives [sic] of the City's Business Administrator.

As a remedy, I request an appropriate salary adjustment together with back pay from the date of my permanent appointment.

The grievance was denied and on September 10, 2008, Council 18 submitted a request for a panel of arbitrators.

The City is a Civil Service jurisdiction. It is classified as a distressed City and receives funding pursuant to the Special Municipal Aid Act, N.J.S.A. 52:27D-118.24 et seq. The City and the New Jersey Department of Community Affairs Local Finance Board entered into a Memorandum of Understanding on December 13, 2004 regarding the conditions under which aid would be received. As part of the Memorandum, the City agreed to abide by the

financial, administrative and operational recommendations made by the Board. The City is subject to a fiscal review by the Board, which has the power to approve and deny the City's annual budget, all debt, all contracts, and all municipal expenditures.

The grievant began working for the City in April 2002 as a Code Enforcement Officer. In November 2006, she was appointed in an acting capacity to Supervising Code Enforcement Officer. She states that the City's Business Administrator told her that there would not be a salary increase at that time and that she would be subject to a trial period. In February 2007, she was told that she was officially being promoted to Acting Code Enforcement Supervisor and would receive an initial increase of approximately \$2000 and would receive the rest of her raise when her position became permanent through the Civil Service Commission. On March 8, the Division of Local Government Services approved a 7% increase of \$2912 annually. In November 2007, her appointment was made permanent by the Civil Service Commission.

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 employer may have.

The City argues that the form that approved the grievant's official appointment in March 2007 provided that she would receive the 7% increase only. It argues that this matter is preempted by N.J.S.A. 52:27D-188.30(a), which sets forth the conditions under which the financial matters of a municipality may become subject to oversight by a financial review board, and the specific powers that such a board possesses. It asserts that because its financial matters are subject to Board review, it cannot independently provide wage increases mid-contract to employees unless an employee has been promoted to a new position or a "desk audit" conducted pursuant to N.J.A.C. 4A:3-3.3 determines that the employee is working beyond the scope of his or her current job title.<sup>1/</sup> It asserts this is confirmed by the fact that the increase in March 2007 required Board approval.

Council 18 responds that on numerous occasions, the Business Administrator promised the grievant that she would receive an

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<sup>1/</sup> The City asserts that at no point since the grievant's promotion to Supervisor of Code Enforcement has her job duties changed so as to require reclassification of her position. Council 18 responds that it has never contended that the grievant is working out of title or that her job duties require reclassification.

additional pay increase once her position became permanent through Civil Service. Council 18 contends that this matter is solely about the total amount of compensation owed as a direct result of a promotion, and that compensation is a mandatorily negotiable term and condition of employment.

To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

It is well settled that absent preemption, compensation is a mandatorily negotiable term and condition of employment.

Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 7 (1973). N.J.S.A. 52:27D-188.30(a) provides, in pertinent part:

a. Upon a finding by the director that an eligible municipality possesses conditions that create extreme difficulty in adopting a budget in compliance with the "Local Budget Law," N.J.S.A. 40A:4-1 et seq., in issuing indebtedness as permitted by law, or in funding capital improvements essential to the protection of public health, safety and welfare, the board may create, by resolution, a financial review board for that municipality.

b. A financial review board shall be authorized to approve, implement and enforce a financial plan for any municipality in which it has been created. . . . A municipality subject to a financial review board shall establish a financial plan, subject to the financial review board's approval, to address the budgetary,

operational, capital, and economic development needs of the municipality. The financial review board shall also have the power to approve: the annual budget of the municipality, the issuance of debt, all contracts entered into during the time of supervision of the financial review boards, and municipal expenditures, if so directed by the board, to the extent the financial review board shall specify. The financial review board may delegate to the municipality such of its powers, under such circumstances and subject to such conditions, as it may determine. A financial review board shall operate until such time that the board finds that the conditions that led to the creation of the financial review board have been substantially abated.

The statute sets forth the conditions under which the financial matters of a municipality may become subject to oversight by a financial review board, and the specific powers that such a board possesses. Nothing in that statute "expressly, specifically and comprehensively" preempts the issue in this case which relates only to whether the grievant should have received additional compensation for her promotion. Bethlehem Tp. Although the City's financial matters are subject to oversight by the Board, that fact does not insulate the City from arbitration over mandatorily negotiable terms and conditions of employment like compensation. The City's arguments regarding the merits of the grievant's claims are outside our limited scope of negotiations jurisdiction. Ridgefield Park.

ORDER

The City of Bridgeton's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller and Voos voted in favor of this decision. Commissioner Watkins voted against this decision. Commissioner Krengel was not present.

ISSUED: September 23, 2010

Trenton, New Jersey