

P.E.R.C. NO. 2017-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-2016-078

CAMDEN COUNTY COLLEGE SUPPORT
STAFF ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Brown & Connery, LLP, attorneys
(Michael J. DiPiero, on the brief)

For the Respondent, NJEA Regional Office 29, (Oron
Nahom, Consultant)

DECISION

On June 17, 2016, Camden County (County) College (College) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Camden County College Support Staff Association (Association). The grievance alleges that the College violated the parties' collective negotiations agreement (CNA) when it terminated the grievant.

The College filed a brief and exhibits.^{1/} The Association did not file opposition.^{2/} These facts appear.

The Association represents all full-time and permanent part-time maintenance workers, boiler operators, mechanics, and painters employed by the College. The College and the Association are parties to a CNA in effect from July 1, 2013 through June 30, 2017. The grievance procedure ends in binding arbitration.

Article IV of the CNA, entitled "Management Rights," provides in pertinent part:

B. The College hereby retains and reserves unto itself without limitation all powers, rights, authority, duties, and responsibilities conferred upon, vested in and exercised by it prior to the signing of this Agreement, including but without limiting the generality of the foregoing, the following rights:

* * *

2. To make rules of procedure and conduct, to use different methods and equipment, to determine work schedules and shifts, to decide the number of employees needed at any particular time, and to be in sole charge of the quality and quantity of the work required.

1/ The College did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

2/ Upon receipt of the College's petition on June 17, 2016, the Commission notified the Association that any opposition was due by July 1. On July 7, the Commission notified the Association that this matter would be considered unopposed unless opposition was filed by July 14.

3. To make such rules and regulations as it may from time to time deem best for the purpose of maintaining order, safety, and/or the effective operation of the College after advance notice thereof to the employees who will be required to comply therewith.

* * *

5. To suspend, demote, discharge or take other disciplinary action against any employee.

Article XII of the CNA, entitled "Notice of Discharge," provides in pertinent part:

Section 1: Employees shall be discharged only for just cause.

Article XVI of the CNA, entitled "Job Descriptions," provides:

Any new or revised job descriptions will be presented to the President of the Support Staff Association five (5) working days before they are made effective.

Effective job descriptions may be reviewed at any time to take into consideration changes that have been made in job duties or equipment (additions or deletions) to determine that they are properly classified.

The College is comprised of three main campuses located in Blackwood, Camden, and Cherry Hill in addition to other satellite facilities throughout the County. The grievant was one of two maintenance plumbers employed by the College. As part of his job responsibilities, the grievant was responsible for maintaining and repairing plumbing/HVAC equipment at the College.

Maintenance plumbers are required to maintain a valid New Jersey

driver's license and execute a "Vehicle Use Agreement and Regulations" annually as a condition of employment.

On December 17, 2015, the grievant was convicted of his third driving under the influence (DUI) charge. On December 24, the grievant advised the College about his DUI conviction and the mandatory loss of his driver's license for a minimum of ten years. After conducting an investigation, the College terminated the grievant on January 15, 2016 because he no longer met the required job qualification of maintaining a valid New Jersey driver's license.

On February 4, 2016, the Association filed a grievance on behalf of the grievant claiming that the College violated Articles IV, XII, and XVI of the CNA when it terminated the grievant. The College denied the grievance at each step of the process. On March 21, the Association demanded binding arbitration. 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 contractual merits of the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in *Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982):

[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.

We must balance the parties' interests in light of the particular facts and arguments presented. *City of Jersey City v. Jersey City POBA*, 154 N.J. 555, 574-575 (1998).

The College argues that it has a non-negotiable managerial prerogative to establish required job qualifications. The College maintains that the purpose of the driver's license requirement is to facilitate the efficient response of the two maintenance plumbers and their tools/materials to all of the

College's campuses and facilities when plumbing/HVAC maintenance or repair are necessary.^{3/}

The Commission has consistently held that public employers have a managerial prerogative to assign unit employees job duties related to their normal job functions and to determine the qualifications required for a job. Madison Bor., P.E.R.C. No. 2016-68, 42 NJPER 497 (¶138 2016); Madison Bor., P.E.R.C. No. 2012-30, 38 NJPER 255 (¶86 2011); City of Newark, P.E.R.C. No. 2011-86, 38 NJPER 65 (¶11 2011). Included in that prerogative is the determination as to whether a particular license is required or desirable for a position. Livingston Tp., P.E.R.C. No. 2016-26, 42 NJPER 228 (¶64 2015); West Windsor-Plainsboro Bd. of Ed., P.E.R.C. No. 2000-26, 25 NJPER 436 (¶30191 1999).

The College's representations and exhibits are undisputed. To permit an arbitrator to determine whether a valid New Jersey driver's license is required for a particular title (e.g., maintenance plumber) would significantly interfere with the College's governmental policy interest in conducting operations using employees that meet its desired minimum qualifications.

^{3/} During the grievance process, the Association argued that the grievant's termination was unjust and that the College did not have the right to make maintaining a valid driver's license a qualification of the grievant's position without negotiations. The Association also claimed that the College's refusal to accommodate the grievant's situation was unreasonable given that the Association was willing to coordinate the grievant's transportation at no cost to the College.

Livingston Tp. Accordingly, the College's request to restrain binding arbitration is granted.

ORDER

The request of Camden County College for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: August 18, 2016

Trenton, New Jersey