

P.E.R.C. NO. 2018-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MILLTOWN,

Petitioner,

-and-

Docket No. SN-2017-050

OPEIU LOCAL 32,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough's request for a restraint of binding arbitration of a grievance contesting the Borough's failure to provide holiday pay to certain part-time dispatchers who worked on Christmas. The Borough contended that the grievants are not members of the negotiations unit represented by the OPEIU. The Commission holds that an arbitrator may interpret the parties' collective negotiations agreement (CNA) to determine whether the grievants are covered employees and if the arbitrator so finds, whether the Borough violated the CNA.

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, Gilmore & Monahan, P.A., attorneys
(Andrea E. Wyatt, on the brief)

For the Respondent, Mets Schiro McGovern & Paris, LLP,
attorneys (Kevin P. McGovern, on the brief)

DECISION

On June 15, 2017, the Borough of Milltown (Borough) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Office and Professional Employees International Union, Local 32 (Local 32). The grievance alleges that the Borough violated the parties' collective negotiations agreement (CNA) when part-time dispatchers who worked on Christmas were not given holiday pay.

The Borough filed a brief, exhibits, and the certification of its Business Administrator. Local 32 filed a brief.^{1/} The

^{1/} Local 32 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.

Borough filed a reply brief. Local 32 and the Borough both filed sur-replies. These facts appear.

The Borough and Local 32 are parties to a CNA in effect from January 1, 2015 to December 31, 2018. The grievance procedure ends in binding arbitration. Article I of the parties' CNA, entitled "Recognition," Section A, provides in pertinent part that Local 32 represents "all full-time and part-time employees who regularly work in the job titles set forth on Schedule A" Schedule A includes dispatchers.^{2/}

Article XXV of the parties' CNA, entitled "Part-Time Employees," provides in pertinent part:

A. Part-time employee means employees who regularly work at least twenty (20) hours per week. Effective January 1, 2006 part-time employees means employees who regularly work at least twenty-five (25) hours per week.

B. All part-time employees shall receive the following economic benefits:

. . .

3. Holidays: That portion of any holiday listed in Article XII which the employee was regularly scheduled to work.

Article V of the parties' CNA, entitled "Overtime," Section C, provides in pertinent part:

Any employee scheduled or called into work Thanksgiving or Christmas shall be paid double time plus the regular holiday pay.

^{2/} Schedule A attached to the parties' CNA refers to dispatchers as "public safety telecommunications operators."

Article XII of the parties' CNA, entitled "Holidays,"
Section A, provides in pertinent part:

A. All employees shall be entitled to the
following paid holiday each year:
. . .
Christmas Day

Three part-time dispatchers worked on December 25, 2016. Although they were paid double time, none of them were given holiday pay. The Borough's Business Administrator certifies that part-time dispatchers hired after 2006 who work less than twenty-five hours per week, which includes the grievants, are not part of the negotiations unit represented by Local 32 and are therefore not entitled to holiday pay.

On January 23, 2017, Local 32 filed a grievance "protesting non-payment of holiday pay for the dispatchers for Christmas." The grievance was denied at every step of the process. On March 17, Local 32 filed a Request for Submission of a Panel of Arbitrators (AR-2017-431). 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 Borough argues that because the part-time dispatchers at issue were hired after 2006 and work less than twenty-five hours per week, they are not unit members and Local 32 does not have standing to arbitrate grievances on their behalf. The Borough

cites Lyndhurst Tp., P.E.R.C. No. 2017-41, 43 NJPER 301 (¶85 2017) in support of its position.

Local 32 argues that all part-time Borough employees, including dispatchers, are within the negotiations unit. Local 32 maintains that Article XXV, Section A merely establishes an hourly requirement for part-time employees with respect to eligibility for the benefits set forth later within Section B. Moreover, Local 32 contends that the underlying dispute requires an interpretation of contractual provisions that is appropriately determined by an arbitrator.

In reply, the Borough maintains that Local 32 has provided no evidence to dispute the Business Administrator's certification that the grievants are not units members and are not entitled to benefits under the contract.

The Commission has held that "an arbitrator may interpret a contractual recognition clause and determine whether an employee is covered by an agreement." University Hospital (UMDNJ), P.E.R.C. No. 2017-34, 43 NJPER 236 (¶73 2016); accord Mt. Olive Bd. of Ed., P.E.R.C. No. 2013-71, 39 NJPER 474 (¶150 2013); see also, Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 88-110, 14 NJPER 342 (¶19130 1988) ("[a]n arbitrator may determine whether [an employee] is performing a job represented by the [employee organization] and whether he is covered by the recognition clause").

We note that the facts of this matter are distinguishable from Lyndhurst Tp., P.E.R.C. No. 2017-41, 43 NJPER 301 (¶85 2017). In that case, it was undisputed that the PBA represented patrol officers, sergeants, and lieutenants but filed a grievance on behalf of non-unit members (i.e., captains and the chief of police). In this case, the dispute centers on whether the definition of part-time employees specified in Article XXV limits the scope of the recognition clause set forth in Article I.

Accordingly, we decline to restrain arbitration in this case. If the arbitrator determines that the grievants are in fact unit members, he/she can then determine whether holiday pay applies. If the arbitrator determines that the grievants are not unit members, then the grievance must be denied.

ORDER

The request of the Borough of Milltown for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioners Boudreau and Eskilson were not present.

ISSUED: October 26, 2017

Trenton, New Jersey