

P.E.R.C. NO. 2023-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Petitioner,

-and-

Docket No. SN-2023-003

AFSCME NEW JERSEY COUNCIL 63,
LOCAL 3474A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City's request for restraint of binding arbitration of AFSCME's grievance contesting the termination of a Municipal Court Director. The Commission finds that the Municipal Court Director is a "managerial executive" under N.J.S.A. 34:13A-3(f) of the Act because the position has managerial authority and broad discretion to both formulate and direct the effectuation of policy. Accordingly, under N.J.S.A. 34:13A-5.3, the grievant is excluded from being represented by an employee organization and AFSCME is statutorily preempted from arbitrating over the grievant's termination.

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.

P.E.R.C. NO. 2023-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Petitioner,

-and-

Docket No. SN-2023-003

AFSCME NEW JERSEY COUNCIL 63,
LOCAL 3474A,

Respondent.

Appearances:

For the Petitioner, O'Toole Scrivo, LLC, attorneys
(Marlin G. Townes, III, of counsel and on the brief)

For the Respondent, AFSCME New Jersey Council 63 (Seth
Gollin, Staff Attorney)

DECISION

On August 9, 2022, the City of Paterson (City) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by AFSCME New Jersey Council 63, Local 3474A (AFSCME). The grievance asserts that the City violated Article V of the parties' collective negotiations agreement (CNA) by terminating the grievant without just cause, and failing to notify the union of the termination.

The City filed a brief, exhibits and the certification of its counsel, Marlin G. Townes, III. AFSCME did not file a brief. These facts appear.

AFSCME represents all of the City's professional, white collar supervisory employees employed by the City, excluding all non-professional, blue collar supervisory employees, confidential employees, police officers, craft employees, fire employees, managerial executives and all non-supervisory employees. The City and AFSCME were parties to a CNA in effect from July 1, 2014 through June 30, 2019, which they modified with a Memorandum of Agreement (MOA) effective from July 1, 2019 through December 31, 2022. The grievance procedure ends in binding arbitration.

Article I of the CNA is entitled Recognition and sets forth the types of City employees who are included or excluded from the unit. Among other excluded employees are "managerial executives within the meaning of the Act."

The grievant was employed by the City as the Municipal Court Director. On March 25, 2022, the City notified the grievant that he was being terminated as a result of an investigation that found that he violated the City's policies against unprofessional conduct and harassment in the workplace. On April 7, AFSCME filed a grievance alleging that the City violated the parties' CNA by terminating the grievant without notifying the union and giving him an opportunity to request a hearing. On April 8, the City denied AFSCME's grievance. On April 22, AFSCME requested binding grievance 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.

Where a statute or regulation addresses a term and condition of employment, negotiations are preempted only if it speaks in the imperative and fixes a term and condition of employment expressly, specifically, and comprehensively. *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).

The City asserts that arbitration should be restrained because the Employer-Employee Relations Act (Act) excludes "managerial executives" from joining a union. It argues that the grievant's position of Municipal Court Director falls within the Act's definition of "managerial executive" as set forth in N.J.S.A. 34:13A-3(f), and therefore AFSCME is preempted from arbitrating his termination. The City asserts that the Civil Service Commission (CSC) job specification for the title of Municipal Court Director demonstrates that it is a managerial executive position involving formulating management policies and practices and directing their effectuation. It notes that the CNA excludes managerial executives from the Recognition clause. The City also contends that AFSCME's grievance is preempted by the Civil Service Act because the grievant was an unclassified employee with no right to permanency in his position.

AFSCME did not file a response opposing the City's arguments and exhibits in support of its claim that the grievant was a managerial executive precluded from representation by a union.

N.J.S.A. 34:13A-3(d) of the Act excludes "managerial executives" from the definition of employee under the Act.

N.J.S.A. 34:13A-5.3 of the Act specifically excludes "managerial executives" from those employees who have the right to join an employee organization. N.J.S.A. 34:13A-3(f) provides the following definition of "managerial executive" for any public employer other than the State of New Jersey:

In the case of any public employer other than the State of New Jersey, "managerial executives" of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

"A managerial executive need not formulate policies and practices and be responsible for directing the effectuation of policies and practices. One or the other is sufficient." New Jersey Turnpike Auth., 289 N.J. Super. 23, 36 (App. Div. 1996), aff'd as mod., 150 N.J. 331 (1997).

In New Jersey Turnpike Auth., 150 N.J. 331 (1997), the Supreme Court of New Jersey adopted the following test to determine managerial authority:

A person formulates policies when he develops a particular set of objectives designed to further the mission of a segment of the governmental unit and when he selects a course of action from among available

alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.

[Id. at 356.]

The CSC job description for the title of Municipal Court Director provides, in pertinent part, the following definitions, characteristics, and examples of work for the position:

- Under direction of the Municipal Court Judge, plans, organizes, and directs all phases of the operation of a large municipal court; does other related duties as required.
- The Director is the highest managerial position within a municipal court directly responsible to the Municipal Court Judge for the administration of all activities of the Court.
- Positions in this class have managerial responsibility for developing goals and objectives, the setting of internal operating procedures, and integrating and directing court programs.
- The Director has operational and programmatic responsibilities for the work performed by all employees. In this regard, the Director oversees the evaluation of work performance and provides training necessary to carry out the objectives of the programs efficiently and effectively.
- Plans and directs the development and implementation of management objectives and goals, establishes program evaluation criteria, establishes office procedures and policies, and develops appropriate staffing patterns to ensure the efficient and effective operation of the court.

The Municipal Court Director job description also explains that the position was only established for large courts, based on certain criteria, due to their size and complexity. The description further provides that "in the overall scope of administrative responsibility, authority, and accountability for court programs and activities" the Municipal Court Director has "substantially greater scope of authority, responsibility, and freedom to act with respect to those areas of management" as compared to Municipal Court Administrators.

Based on the CSC job description of the Municipal Court Director position that the grievant held, we find that he was a "managerial executive" under the Act. The grievant's responsibilities in planning, organizing, and directing all phases of the operation of a large municipal court fall within the Act's definition of a managerial executive as a person who "formulate[s] management policies and practices and" is "charged with the responsibility of directing the effectuation of such management policies and practices." N.J.S.A. 34:13A-3(f). The Municipal Court Director is the "highest managerial position within a municipal court directly responsible to the Municipal Court Judge for the administration of all activities of the Court." As such, the Director develops and implements goals and objectives, directs court programs, sets procedures and policies, establishes program evaluation criteria, oversees the evaluation

of employee work performance and training, and develops staffing patterns to ensure the efficient and effective operation of the court. Under both the statutory definition and the Court's test in New Jersey Turnpike Auth., the Municipal Court Director has managerial authority and broad discretion to both formulate and direct the effectuation of policy. As the grievant was a "managerial executive" under the Act, he is excluded from representation by AFSCME. Accordingly, arbitration over the termination grievance is statutorily preempted.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni and Papero voted in favor of this decision. None opposed. Commissioner Voos abstained from consideration. Commissioner Ford recused himself.

ISSUED: November 22, 2022

Trenton, New Jersey