

P.E.R.C. NO. 2023-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF MILLVILLE,

Petitioner,

-and-

Docket No. SN-2023-006

NEW JERSEY CIVIL SERVICE ASSOCIATION
CUMBERLAND COUNTY COUNCIL 18,

Respondents.

SYNOPSIS

The Public Employment Relations Commission grants the City's request for a restraint of binding arbitration of Council 18's grievance. The grievance asserts that the City violated the parties' collective negotiations agreement when it unilaterally changed the grievant's provisional job title from Sanitation Inspector back to her permanent title of Code Enforcement Officer. The City eliminated the Sanitary Inspector title for budgetary reasons and reassigned the grievant to her former position, as permitted by the Civil Service Commission's reclassification of the job title, with no reduction in pay despite her working fewer hours. The Commission finds that the City's reassignment of the grievant and elimination of the Sanitation Inspector title is not mandatorily negotiable or legally arbitrable because arbitration of Council 18's grievance would significantly interfere with the City's managerial prerogative to reassign employees. The Commission further finds no severable compensation claim that resulted from the grievant's reassignment.

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, Blaney, Donohue & Weinberg, P.C.,
attorneys (William G. Blaney, of counsel; John R.
Dominy, on the brief)

For the Respondent, O'Brien, Belland & Bushinsky, LLC,
attorneys (Matthew B. Madsen, of counsel and on the
brief)

DECISION

On August 31, 2022, the City of Millville (City) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the New Jersey Civil Service Association Cumberland County Council 18 (Council 18). The grievance asserts that the City violated the parties' collective negotiations agreement (CNA) when it unilaterally changed the grievant's provisional job title from Sanitation Inspector back to her permanent title of Code Enforcement Officer.

The City filed briefs, exhibits and the certifications of its Human Resources Manager, Pamela Shapiro; and its counsel,

Kyle D. Weinberg. Council 18 filed a brief, exhibits and the certification of its counsel, Matthew B. Madsen.^{1/} These facts appear.

Council 18 represents all full-time City employees, but excluding policemen, firemen, managerial executives, supervisors, and employees who are confidential, seasonal, summer, temporary emergency or newly hired provisional. The City and Council 18 are parties' to a CNA with a term of January 1, 2020 through December 31, 2023. The grievance procedure ends in binding arbitration. Council 18's grievance alleges violation of the CNA's Article 3 (Management Rights), 5 (Salaries), 6 (Salary Job Guide), 23 (Vacancies), and "all others that may apply."

Shapiro certifies that the City is a Civil Service Commission (CSC) jurisdiction. The grievant was hired on October 9, 2018 as a Code Enforcement Officer, a position that was acknowledged and classified by the CSC. Shapiro certifies that in August 2020, the grievant filed a classification appeal with the CSC, alleging that she had been working out-of-title and should be reclassified to the title of Sanitation Inspector.

By letter dated May 5, 2021, the CSC determined that the appropriate classification of the grievant's position is

^{1/} N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge. Madsen's certification appears to simply authenticate the exhibits presented by Council 18, but does not certify to the facts asserted in Council 18's briefs.

Sanitation Inspector, pending promotional and certification procedures, and that the appointment would be retroactively effective August 24, 2020. The letter further authorized the City to reassign the grievant to her permanent title as follows:

...the appointing authority [City] shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotion, or lateral, shall be effected in accordance with all applicable rules.

On May 28, 2021, the City appealed the CSC's determination. The CSC denied the appeal in its letter dated July 20, 2021, which reiterated the City's option to "reassign the appellant duties outside of the realm of enforcement of the sanitation code, or the other codes listed in the Code Enforcement Officer job definition, if you wish [the grievant] to remain in that title." On September 7, 2021, the CSC issued a Final Administrative Action finding that the City has failed to establish that the grievant's position warrants a classification of Code Enforcement Officer.

Shapiro certifies that the grievant was made a provisional Sanitation Inspector because the City was required to ask for a test through the CSC for this competitive position prior to

making a permanent appointment. Shapiro certifies that, prior to the issuance of the examination from the CSC, the City determined in March 2020 they would not be utilizing the title of Sanitation Inspector due to budgetary reasons. Shapiro further certifies that the City received authority from the CSC to assign the grievant back to her permanent title of Code Enforcement Officer. Shapiro also certifies that the grievant's wages were not reduced following her return to her permanent position despite working fewer hours.

On March 10, 2022, Council 18 filed a grievance alleging violation of several provision of the parties' CNA as follows:

On March 1, 2022, the city unilaterally, improperly, and without cause changed my job classification, job duties, and/or rate of pay.

On June 9, 2022, Council 18 filed a Request for Submission of a Panel of Arbitrators. 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 City argues that its request for a restraint of binding arbitration of Council 18's grievance should be granted because its decision to eliminate the position of Sanitation Inspector for budgetary reasons is within its non-negotiable, managerial

prerogative. The City further argues that its decision was not a "layoff" pursuant to N.J.A.C. 4A:8-1, et seq. and N.J.S.A. 11A:8-1., et seq. because the grievant was not terminated, demoted, reduced in hours or pay, but rather, was reassigned from a provisional title to her former permanent title. The City maintains that the grievant's reassignment was done under the authority of the CSC and that any challenge to the reassignment should be addressed by the CSC rather than arbitration.

Council 18 argues that the City's reliance on the CNA's Article 3, management rights clause, to support its elimination of the Sanitation Inspector title is a contractual defense for an arbitrator to determine. Council 18 further argues that the City demoted the grievant, as set forth in N.J.A.C. 4A:8-1.1(a)^{2/}, when it removed her from the higher title, Sanitation Inspector, and placed her in a lower title, Code Enforcement Officer. Council 18 asserts that whether the City's unilateral removal of the grievant from Sanitation Inspector constituted a "demotion" pursuant to the above-cited regulation is a factual determination that an arbitrator is empowered to decide.

^{2/} N.J.A.C. 4A:8-1.1(a) provides: "An appointing authority may institute layoff actions for economy, efficiency, or other related reasons.

1. Demotions for economy, efficiency, or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter."

A decision to reassign an employee is generally not mandatorily negotiable. City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 575 (1998); Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park; City of Newark, P.E.R.C. No. 2005-2, 30 NJPER 294 (¶102 2004), aff'd, 31 NJPER 287 (¶112 App. Div. 2005). Although an employee's assignment has an appreciable effect on his or her welfare, that impact is outweighed by the managerial interest in deploying personnel in the manner the employer considers best suited to the delivery of governmental services. Ridgefield Park. However, the balance may shift if a reassignment implicates other negotiable employment conditions such as work hours or compensation. City of Newark, P.E.R.C. No. 2006-30, 31 NJPER 347 (¶137 2005). "Employees have a strong interest in receiving additional pay for performing work of a higher level or different nature than that on which their standard compensation is based" and "[i]n general, those compensation claims do not significantly interfere with governmental policymaking." Passaic Valley Water Commission and CWA Local 1032, P.E.R.C. No. 2005-66, 31 NJPER 121 (¶51 2005), aff'd, 32 NJPER 139 (¶64 App. Div. 2006), certif. den. 188 N.J. 356 (2006). Public employers also generally have a managerial prerogative to abolish positions and reduce its staff for organizational and budgetary reasons, but ordinarily must negotiate before reducing employees' work hours and compensation.

See Linden Board of Education and Linden Education Association, P.E.R.C. No. 2022-2, 48 NJPER 100 (¶24 2021), aff'd, 49 NJPER 203 (¶48 App. Div. 2022).

Here, the City eliminated the Sanitary Inspector title for budgetary reasons and reassigned the grievant to her former Code Enforcement Officer title. The CSC's May 5 and July 20, 2021 letters provide the option to the City of reassigning the grievant to the Code Enforcement Officer title. This is in accord with the above precedent that the reassignment of employees from one title to another, and the commensurate change in job duties, are generally not mandatorily negotiable or legally arbitrable.

Additionally, we find no severable compensation claim that resulted from the grievant's reassignment that would be legally arbitrable. The City certifies, and Council 18 does not dispute, that the grievant's reassignment did not reduce her pay despite her working fewer hours. The grievant did not file a certification and there is no allegation that she is continuing to perform the duties and responsibilities of Sanitation Inspector and not being compensated for such "out-of-title" work. Even if Council 18 alleged that the grievant was still performing the job of Sanitation Inspector, absent an adverse impact on compensation or work hours, that issue would be within the CSC's purview.

In sum, we find that arbitration of the Council 18's grievance would significantly interfere with the determination of the City's managerial prerogative to eliminate the Sanitation Inspector title and reassign the grievant to her former permanent title of Code Enforcement Officer.

ORDER

The City of Millville's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: February 23, 2023

Trenton, New Jersey