

I.R. NO. 97-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY,

Petitioner,

-and-

Docket No. SN-97-62

DISTRICT 1199J, NATIONAL UNION
OF HOSPITAL and HEALTH CARE
EMPLOYEES, AFSCME, AFL-CIO,

Respondent.

SYNOPSIS

Somerset County sought an interim restraint pending a final Commission decision of arbitration over the salary of newly hired nurses. The contract between the County and District 1199J establishes a minimum and maximum salary for nurses. The County argues it has a managerial prerogative to establish a salary within this contractual range.

A Commission Designee declined to restrain arbitration. Salaries for newly hired employees is mandatorily negotiable. It is for the arbitrator (or the Courts) to determine if the grievance is contractually arbitrable.

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Appearances:

For the Petitioner,
Shanley & Fisher, attorneys
(Michael R. Clarke, of counsel)

For the Respondent,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

On June 3, 1997, the County of Somerset filed an Order to Show Cause with the Public Employment Relations Commission seeking an interim restraint pending a final Commission decision on a previously filed scope of negotiation petition. The Arbitration was scheduled for June 6, 1997.

I executed the order^{1/} and a hearing was conducted on

^{1/} Since the order was filed three days prior to the scheduled arbitration date, there was not enough time under the Commission rules to restrain the arbitration. Accordingly, I modified the order so that it sought to restrain the arbitrator from rendering a decision.

June 20, 1997. Both parties submitted exhibits and argued orally.

The Union's demand for arbitration states "the starting salary for nurses, class action." The County seeks to restrain the arbitration because "it concerns a matter of inherent managerial prerogative, i.e., the determination of the starting salary of nurses within the collective negotiated minimum and maximum salaries for such employees." It contends, the subject matter of the grievance is beyond the scope of collective negotiations.

The County and District 1195J are parties to a collective negotiation agreement.

Article IX of the agreement provides:

1. No employee shall be hired below the minimum effective rate for his/her classification.
2. The minimum and maximum rate for all classifications shall be contained in Stipulation II annexed hereto. Stipulation II provides minimum and maximum salaries for each year of the agreement.

Article IX, Section V of the Agreement provides in part:

If it is claimed by the Union that the employer has instituted a new job classification or substantially modified an existing job classification, the Union may process a claim for a change in the salary rate for such classification in accordance with the provision of Article XXII and XXVII of this Agreement.

The union arbitration demand identified the grievance a "starting salary for nurses class action."

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final

Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 36 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), states the tests for determining negotiability: A subject is negotiable if:

(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. [Id. at 404].

The County argues that the ability to hire and attract qualified employees is an essential managerial function. It admits

it has an obligation to negotiate wages and salaries for each job classification. However, it argues that "once ranges have been established, as they have been in Article IX of the Agreement, the County has the right to hire new employees within those ranges."

The Commission has previously dealt with this issue in a case involving this same employer. In County of Somerset, P.E.R.C. No. 86-136, 12 NJPER 453 (¶17171 1986), the Commission expressly found that initial salary placement is mandatorily negotiable.

Our Supreme Court has clearly stated that compensation is a term and condition of employment within the meaning of the Act. Bd. of Ed. of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). Applying that analysis, the Commission has long held that initial salary placement is a mandatorily negotiable subject. See Fairview Bd. of Ed., P.E.R.C. No. 84-59, 10 NJPER 10 (¶15006 1983); Oakland Bd. of Ed., P.E.R.C. No. 82-125, 8 NJPER 378 (¶13173 1982); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980); Eastern Camden Bd. of Ed., P.E.R.C. No. 80-158, 6 NJPER 348 (¶11174 1980); Dennis Tp. Bd. of Ed., P.E.R.C. No. 80-157, 6 NJPER 334 (¶11167 1980); New Jersey College of Medicine and Dentistry, P.E.R.C. No. 80-127, 6 NJPER 213 (¶11104 1980). The Appellate Division recently affirmed that position. Belleville, slip opinion at 3. Somerset.

The County has mixed a contractual argument - its right to establish starting salary under Article II of the contract - with a scope of negotiation argument. It does not have a right to unilaterally establish new starting salaries. The Commission has no authority to review the County's contractual argument.

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The County has failed to show it has a substantial likelihood of prevailing before the Commission.

Its application to restrain the arbitrator is denied.

A handwritten signature in black ink, appearing to read "Edmund G. Gerber", written over a horizontal line.

Edmund G. Gerber
Commission Designee

DATED: June 24, 1997
Trenton, New Jersey