

P.E.R.C. NO. 85-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE TOWNSHIP OF WEST
WINDSOR,

Petitioner,

-and-

Docket No. SN-84-129

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that the Communications Workers of America, AFL-CIO filed on behalf of an employee against the Township of West Windsor. The grievance alleged that the Township violated its contract with CWA when it refused to promote the grievant to the position of road superintendent.

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Appearances:

For the Petitioner, Schragger, Schragger & Lavine, P.C.
(Lucille E. Del Tufo, Esq., on the brief)

For the Respondent, Robert O. Yaeger, Senior Staff
Representative, on the brief

DECISION AND ORDER

On June 14, 1984, the Township of West Windsor ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Township seeks to restrain binding arbitration of a grievance which Local 1040, Communications Workers of America, AFL-CIO ("Local 1040") has filed against it. The grievance asserts that the Township violated its contract with Local 1040 when it refused to promote James Vandegrift to the position of road superintendent.

The parties have filed briefs and documents. The following facts appear.

Local 1040 is the majority representative of certain Township employees including blue collar employees in the public works department. The Township and Local 1040 have entered a

collective negotiations agreement effective from January 1, 1983 through December 31, 1984. That agreement's negotiated grievance procedures end in binding arbitration. Article XXVI, entitled Promotion, provides in part:

C. Temporary promotional appointments shall be made only in cases of emergency. When an employee is given an opportunity on a trial or temporary basis to qualify for promotion by serving in a new position, their permanency in their former position shall be continuous during a three month trial or temporary period and the employee shall have the opportunity to return to the former position in the event the promotional opportunity does not become permanent provided there is no discharge for cause.

D. Announcement of vacant or new positions that are permanent shall be posted on the bulletin boards for a period of seven (7) working days by the Township Administrator. Within this time employees interested in the job are to make a standard written application through their appropriate supervisor who in turn will discuss it with the Township Administrator.

On December 5, 1983, the road superintendent in the public works department resigned. James Vandegrift, a road crew chief, was named acting road superintendent and was paid the supervisor's salary. A new road crew chief was not appointed. The notice informing Vandegrift of his temporary promotion stated:

This being a supervisory position it is not covered in the collective bargaining agreement between the Township and the White and Blue Collar Workers Unit. When the need for an Acting Road Superintendent is no longer required you will then return to your current status as an employee covered by the terms of the contract in your current job class.

On December 16, 1983, Local 1040 filed two grievances alleging, respectively, that the Township had violated Article XXVI, Sections C and D when it: (1) refused to promote Vandegrift to the position of road superintendent, and (2) failed to post a

notice concerning the vacant position of road crew chief. The first grievance requested that Vandegrift be promoted; the second grievance requested that a notice be posted for the vacant position.

On December 21, 1983, the Township's Acting Administrator denied the two grievances. She wrote that the first grievance was not arbitrable because the position of road superintendent was not within the collective negotiations unit. She wrote that the second grievance was being denied because the Township had not decided whether to fill the "vacant road crew chief position."

On January 20, 1984, the Township's attorney wrote Local 1040's representative to clarify the Township's response to the second grievance. She stated that the position of road crew chief was not in fact vacant and that Vandegrift retained that position permanently, during his temporary appointment as acting road superintendent. Therefore, the attorney concluded, the Township was not required to post a notice of vacancy.

On January 23, 1984, Local 1040's representative sent the Township a letter asserting that the Township had denied its blue collar employees upward promotional mobility. The representative stated that Local 1040 would be willing to discuss the matter further before seeking arbitration.

On February 15, 1984, the Township and Local 1040's representative discussed these grievances. The Township informed Local 1040 that it was reorganizing the management of the Road Department and incorporating it into a Department of Public Works and Engineering. The Township subsequently created a new position

-- Director of Public Works -- and on May 23, 1984, sent Local 1040 a copy of the job description for that position. The Township is apparently going to eliminate the position of road superintendent.

Local 1040 sought binding arbitration on December 28, 1983. The demand for arbitration identifies the grievance to be arbitrated: "Promotion of James Vandegrift to Road Superintendent - Article XXVI." The instant petition ensued.^{1/}

The Township contends that it has a non-negotiable and non-arbitrable managerial prerogative to create, abolish or fill the managerial positions of Director of Public Works and road superintendent.^{2/} Local 1040 contends that the instant dispute involves promotional procedures and that the Township has arbitrarily and capriciously denied Vandegrift the opportunity for promotion to road superintendent.

We hold that the grievance concerning the Township's refusal to promote Vandegrift to the position of road superintendent is non-arbitrable. The Township cannot be required either to fill a vacancy in a particular position or to promote a particular individual. See Paterson Police PBA Local No. 1. v. City of

1/ The Township sought a restraint of binding arbitration pending this determination. On July 3, 1984, Commission designee Edmund G. Gerber issued a restraint of arbitration insofar as the dispute involved the creation of the management position of Director of Public Works. He denied a restraint to the extent that the dispute involved other issues such as promotional procedures or Vandegrift's unit placement and compensation.

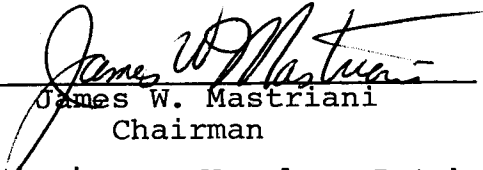
2/ The Township also asserts that Local 1040 only sought to submit one grievance to binding arbitration: the first grievance concerning the refusal to promote Vandegrift to road superintendent. Thus, we make no determination concerning the arbitrability of the second grievance.

Paterson, 87 N.J. 78 (1981); In re Board of Education of Township of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976); In re Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). Accordingly, we must restrain binding arbitration of the grievance contesting the Township's refusal to promote Vandegrift to road superintendent.^{3/}

ORDER

The request of the Township of West Windsor for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Butch, Suskin, Newbaker and Hipp voted for this decision. Commissioner Graves voted against this decision.

DATED: TRENTON, NEW JERSEY
September 19, 1984
ISSUED: September 20, 1984

^{3/} We do not read the grievance documents to encompass any other issues besides the non-arbitrable one of an employee's alleged entitlement to promotion.