

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ENGLEWOOD,

Petitioner,

-and-

Docket No. SN-84-34

LOCAL 29, R.W.D.S.U., AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declares that decisions of the City of Englewood to establish a job description for the newly created position of administrative analyst and to use volunteers as police dispatchers were not mandatorily negotiable and arbitrable simply because Local 29, RWDSU, AFL-CIO alleged that anti-union animus motivated these decisions. Binding decisions concerning the validity of managerial decisions claimed to be discriminatory must be secured through appropriate administrative forum. Here, the appropriate administrative forum is an unfair practice proceeding before the Commission, not a scope of negotiations proceeding.

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Appearances:

For the Petitioner, Rupp & Ten Hoeve, Esqs.
(William F. Rupp, of Counsel)

For the Respondent, Loccke & Correia, Esqs.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On December 30, 1983, the City of Englewood ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The City seeks a determination that its decisions to establish a job description for the newly created position of administrative analyst and to use volunteers as police dispatchers were not mandatorily negotiable. Local 29, R.W.D.S.U., AFL-CIO ("Local 29"), the majority representative of the employees affected by these decisions, contends that these decisions, while generally not mandatorily negotiable, were motivated by illegal anti-union animus and are therefore negotiable.

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

Local 29 is the majority representative of certain of the City's classified employees. The City created the position

of administrative assistant in the Office of the Director of Public Safety. The job description for this position requires that its occupant speak Spanish and English. The City also abolished one of two civilian dispatcher positions in its police department. It then used volunteers from its auxiliary police force to dispatch police.

On September 6, 1983, Local 29 filed an unfair practice charge alleging that the City violated subsections 5.4(a)(1) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it made these decisions. The charge alleged that anti-union animus illegally motivated these changes. Local 29 also requested interim relief pending determination of its charge. Prior to a hearing on that request, the parties apparently agreed that Local 29 would withdraw the unfair practice charge, a question concerning the starting salary of the newly created position would be referred to the grievance procedure, and a scope petition would be filed raising the issues now before us. The instant petition ensued.

The City contends that it has no obligation to negotiate over these two decisions and that any challenge to these decisions based on alleged anti-union animus must be litigated through unfair practice proceedings. It further notes that Local 29 remains free to reinstitute its unfair practice charge. Local 29 asserts

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

that the City's decisions, while ordinarily non-negotiable, may fall within the scope of negotiations if in fact they were motivated by anti-union animus.

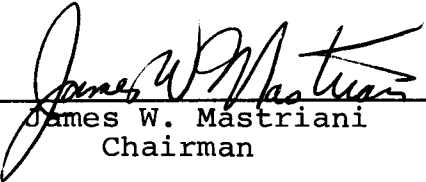
We will assume, given the parties' shared position, that the City's decisions involved subjects which in general were not mandatorily negotiable. Thus, the only question in this case is whether allegations that these decisions were illegally motivated make these subjects mandatorily negotiable. The principles set forth in Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983) dictate that they do not. Under Teaneck, grievances alleging discrimination in the making of managerial decisions may not be submitted to binding arbitration, although such decisions may be questioned at lower level, non-binding steps of the grievance procedure including advisory arbitration. Binding determinations concerning the validity of such decisions must be secured through the appropriate administrative forums. In this case, the appropriate administrative forum, which the parties agree is available, is an unfair practice proceeding.

ORDER

The City's determinations to establish a job description for the newly created position of administrative analyst and to use volunteers as police dispatchers are not made mandatorily

negotiable simply because they were allegedly motivated by illegal anti-union animus.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp, Newbaker, Suskin and Wenzler voted in favor of this decision. None against.

DATED: Trenton, New Jersey
November 1, 1984
ISSUED: November 2, 1984