

P.E.R.C. NO. 94-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Petitioner,

-and-

Docket No. SN-93-43

IBT LOCAL 723,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a dispute over the compensation to be paid an employee who has been laterally transferred from the position of Administrative Analyst to the position of Program Analyst is mandatorily negotiable. The employer has not asserted that any Civil Service statutes or regulations precluded it from paying the same salary to an employee performing the same work as before a transfer.

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Appearances:

For the Petitioner, Stephen J. Edelstein, County Counsel
(Lucille LaCosta-Davino, Assistant County Counsel)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, P.C., attorneys (Jacqueline
Jassner, of counsel)

DECISION AND ORDER

On December 2, 1992, the County of Essex petitioned for a scope of negotiations determination. The County seeks a declaration that the subject of a dispute between it and IBT Local 723 is not mandatorily negotiable. That dispute is over the compensation to be paid an employee who has been laterally transferred from the position of Administrative Analyst to the position of Program Analyst.^{1/}

^{1/} The dispute had been the subject of an unfair practice charge. The parties agreed to adjourn the unfair practice proceedings so that the Commission could determine the negotiability of the compensation issue.

The parties have filed exhibits and briefs.^{2/} Local 723 has also filed its president's affidavit. These facts appear.

Local 723 represents all supervisory employees in the County Welfare Division. The negotiations unit includes the position of Administrative Analyst. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of contractual disputes.

Walter Zuraski was an Administrative Analyst in the County's Division of Welfare in the Department of Citizen Services. Effective August 30, 1991, Zuraski was laid off from that position. The Department of Personnel notified him that there were no special reemployment or demotional opportunities at that time, but pursuant to N.J.A.C. 4A:8-1.1(b) he did have lateral displacement rights to the position of Program Analyst. That position was then held by Kathleen Hesselbirg.

Zuraski accepted the lateral transfer and began work the next day as a Program Analyst. He remained in the same office, sat at the same desk, and performed the same duties he had before the transfer. The Director of the Division of Welfare represented that Zuraski would continue to receive the same salary, a representation confirmed by two Department of Personnel employees but considered ineffective by the County because the Division Director does not have authority to control salary policies.

^{2/} The County has shown good cause for filing an untimely reply brief.

For his first month as a Program Analyst, Zuraski continued to receive his previous salary. Effective October 4, 1991, however, the County unilaterally reduced Zuraski's salary to that paid a Program Analyst. According to the unfair practice charge, he was reduced from step 9 to step 7 of range 23 of the salary guide, a difference of \$2000 a year.

Local 723 asserts that employees demoted in accordance with Department of Personnel Regulations have always received their pre-demotion salaries; it cites the case of 109 employees laid off in 1970. The County responds that those layoffs occurred 20 years ago and no layoffs have occurred since then, the employees were not part of Local 723's negotiations unit, and the employees were demoted rather than transferred.

The County has also submitted an April 11, 1991 memorandum from the Director of Personnel "thru" the Acting County Administrator to Department Directors. The memorandum is entitled Demotional Salary Adjustments Resulting From Layoff Procedures. It sets the guidelines for determining such salary adjustments, absent specific contractual provisions. The memorandum, in part, provides for red-circling the salaries of certain employees, including those laterally displaced and then placed in a separate salary range structure in a different negotiations unit.

The County contends that it has a managerial prerogative under Plainfield Ass'n of School Administrators v. Plainfield Bd. of Ed., 187 N.J. Super. 11 (App. Div. 1982), to reduce Zuraski's

salary; it should not be penalized for following Civil Service requirements by offering Zuraski the position of Program Analyst; and if Zuraski prevails upon his compensation claim, then two other employees may each be entitled to \$14,000 more in annual salary. Local 723 contends that its claim that Zuraski should be paid his previous salary is mandatorily negotiable since he performs the same duties; past practice requires maintaining the salaries of demoted employees; and the Division Director represented that Zuraski would continue to receive his previous salary and he did so for a month.

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 Local 723's claims or the County's defenses. We specifically do not consider such questions as whether the County is contractually bound by a past practice or any representations. We also limit this opinion to the negotiability of Zuraski's compensation claim.

The County has a managerial prerogative to abolish positions and to lay off employees, subject to Civil Service

statutes and regulations. Council of New Jersey State College Locals, NJSFT, AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18 (1982); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Morris Cty. College, P.E.R.C. No. 93-24, 18 NJPER 477 (¶23216 1992). However, Local 723 is not contesting that prerogative. Instead, it is arguing that Zuraski is being required to perform the same work as before the transfer and should be paid the same salary. We have held that such compensation claims are mandatorily negotiable. See, e.g., Somerset Cty. College, P.E.R.C. No. 86-48, 11 NJPER 690 (¶16238 1985); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80-T1 (5/24/82). We distinguish Plainfield because in that case the employee was transferred to a new location and assigned different duties.^{3/} The employer has not asserted that any Civil Service statutes or regulations preclude it from paying the same salary to an employee performing the same work as before a transfer, and we know of no such impediment.

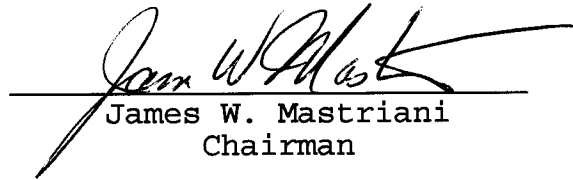
^{3/} We have also distinguished Plainfield in a case in which employees were transferred within a negotiations unit and their majority representative asserted that the employer had agreed to red-circle their salaries. Camden Bd. of Ed., P.E.R.C. No. 88-18, 13 NJPER 718 (¶18268 1987). If the position of Program Analyst is also in Local 723's unit, a question not answered by this record, then this dispute is mandatorily negotiable under Camden as well as under Somerset and Deptford.

Whether or not this employer has so agreed is for the arbitrator to decide.^{4/}

ORDER

The dispute between the County of Essex and IBT Local 723 over Walter Zuraski's salary is mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: September 24, 1993
Trenton, New Jersey
ISSUED: September 24, 1993

^{4/} Even if Local 723 establishes its contractual claim, the employer will still save money as a result of the bumping process started by abolishing the Administrative Analyst position. Presumably, Hesselbirg's job has been eliminated from the payroll.