

P.E.R.C. NO. 96-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MONMOUTH,

Petitioner,

-and-

Docket No. SN-94-68

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 1032,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by an employee represented by the Communications Workers of America, AFL-CIO, Local 1032 against the County of Monmouth. The grievance asserts that the employer violated the parties' collective negotiations agreement when it did not promote a social worker receiving a master's degree in social work to the position of social work specialist. The Commission finds that an employer has a managerial prerogative to promote or not promote an employee, the grievance is not mandatorily negotiable or arbitrable, and a compensation claim is not severable from the promotion claim. The Commission also finds that a successor contract proposal addressing the same issue is not mandatorily negotiable.

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, Robert J. Hrebek, attorney

For the Respondent, Weissman & Mintz, attorneys
(Steven P. Weissman, of counsel)

DECISION AND ORDER

On January 31, 1994, the County of Monmouth petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by an employee represented by the Communications Workers of America, AFL-CIO, Local 1032. The grievance asserts that the employer violated the parties' collective negotiations agreement when it did not promote a social worker receiving a master's degree in social work to the position of social work specialist. The County also contends that a successor contract proposal addressing the same issue is not mandatorily negotiable.

The parties have filed exhibits and briefs. These facts appear.

CWA represents a unit of clerical and professional employees in the County's Division of Social Services. The unit includes the titles of social worker and social work specialist. According to a Civil Service job description, a social work specialist must possess a master's degree and is responsible for instructing and advising social workers.

Before January 1, 1991, the employees in this unit worked for the Monmouth County Board of Social Services and were covered by a Board-CWA collective negotiations agreement expiring on December 31, 1991. When the Board was abolished effective January 1, 1991, its employees became County employees. The employees nevertheless continued to be covered by the terms of the Board-CWA contract until CWA and the County negotiated a new contract effective from January 1, 1992 through December 31, 1993. That contract's grievance procedure ends in binding arbitration.

The employer states that the Board of Social Services apparently had an unwritten policy of promoting social workers receiving master's degrees in social work to social work specialists, regardless of need or additional duties assumed. That policy was not reduced to writing or placed in the Board-CWA collective negotiations agreement. The last such promotion occurred in May 1991. A hiring and promotion freeze has existed for the past several years.

On April 22, 1993, a social worker, Darleen A. Palmizio, filed a grievance asserting that:

Management unjustly refused a title and salary change from Social Worker to Social Work Specialist upon completion of a Master's program. This violates the collective bargaining agreement and past agency practices.

The grievance sought a title and salary change retroactive to Palmizio's graduation in January 1993. The grievance was denied and CWA demanded arbitration. Its demand lists this issue:

Management denied a salary increase for an employee who completed [a] master's degree in violation of [the] bargaining agreement and past practice.

The parties are also engaged in successor contract negotiations. CWA has submitted this proposal:

All employees in the title of Social Worker, upon completion of the Masters of Social Work program, shall be provisionally promoted to the Title of Social Work Specialist.

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 nor do we consider the wisdom of the proposal. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (1977).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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. [Id. at 404-405]

An employer has a managerial prerogative to promote or not promote an employee. North Bergen Tp. Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97, 104 (App. Div. 1976). It cannot be compelled to negotiate or arbitrate decisions on whether to fill vacant positions. Paterson Police PBA v. City of Paterson, 87 N.J. 78 (1981). But salary guides are mandatorily negotiable and an employee's placement on a salary guide is a legally arbitrable issue. Belleville Bd. of Ed. and Belleville Ed. Ass'n, 209 N.J. Super. 93 (App. Div. 1986). Salary guides often provide for salary guide advancement when an employee earns an advanced degree. For example, a salary guide covering teachers with the same seniority will typically reflect a higher salary for a teacher with a higher degree. See, e.g., Clifton Bd. of Ed., P.E.R.C. No. 95-3, 20 NJPER 316 (¶25160 1994).

CWA's negotiations proposal mandates a provisional promotion upon attaining a higher degree. That proposal is not mandatorily negotiable under North Bergen and Paterson.

The employee's grievance also seeks a promotion to social work specialist. That claim is also not mandatorily negotiable.

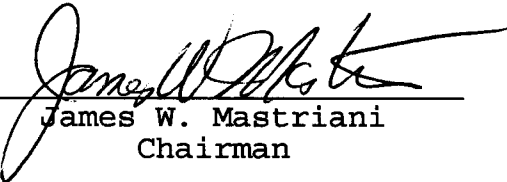
Recognizing that it cannot contest the denial of a promotion, CWA asserts that it has limited its demand for arbitration to the negotiable and arbitrable issue of the grievant's entitlement to extra compensation upon receiving an advanced degree. It relies upon Village of Ridgewood, P.E.R.C. No. 93-87, 19 NJPER 216 (¶24104 1993). The employer asserts that the claim for additional compensation is linked to the demand for a higher title and that the two issues cannot be separated for purposes of arbitrating a claim for a higher salary.

Based upon the particular facts of this case, we hold that the compensation claim is not severable from the promotion claim. It is undisputed that the social work specialist title and duties are different from the social worker title and duties and constitute a promotion. CWA's claim that a social worker earning a master's degree is entitled to a salary increase is based not upon a negotiated salary guide tying higher steps to higher degrees, nor upon a claim that the grievant has been performing the duties of a higher position. Instead its claim rests upon an alleged practice of promoting social workers earning master's degrees to a higher position with a higher salary. The promotion and salary claims are thus interwoven and not mandatorily negotiable or arbitrable.

ORDER

CWA's negotiations proposal is not mandatorily negotiable and the request of the County of Monmouth for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision.

DATED: September 21, 1995
Trenton, New Jersey
ISSUED: September 22, 1995