

P.E.R.C. NO. 98-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Petitioner,

-and-

Docket No. SN-98-08

MORRIS COUNCIL NO. 6,
NJCSA, IFPTE, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Morris for a restraint of binding arbitration of a grievance filed by an employee represented by Morris Council No. 6, NJCSA, IFPTE, AFL-CIO. The grievant seeks compensation for work performed in the provisional job title of Tree Surgeon. The County asserts that this dispute is not legally arbitrable because the New Jersey Department of Personnel has jurisdiction to determine whether the grievant was properly classified as a Tree Surgeon. The Commission finds that the question of whether the employer is contractually obligated to pay the higher compensation to the grievant, given a classification of Tree Surgeon, is legally arbitrable.

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, Office of Labor Relations, County of
Morris (Steve Cudas, Labor Relations Specialist)

For the Respondent, Fox & Fox, attorneys
(Craig S. Gumpel, of counsel)

DECISION

On July 25, 1997, the County of Morris petitioned for a
scope of negotiations determination. The County seeks a restraint
of binding arbitration of a grievance filed by an employee
represented by Morris Council No. 6, NJCSA, IFPTE, AFL-CIO. The
grievant seeks compensation for work he did in the provisional job
title of Tree Surgeon between October 4, 1995 and April 10, 1996.

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

Council No. 6 represents various County employees,
including Tree Trimmers, Tree Climbers, and Tree Surgeons. The
parties entered into a collective negotiations agreement with a

grievance procedure ending in binding arbitration of contractual grievances. Contractual grievances, however, do not include:

(1) Matters which involve the interpretation or application of a Civil Service Rule or Regulation of N.J.S.A. 11A:1-1 et seq. the Civil Service Law, and in which a method of review is prescribed by law, rule or regulation.

Article 18 of the agreement is entitled Salaries and specifies compensation increases for promotions to positions in higher salary grades.

Robert Smith is employed by the County and works for the Morris County Shade Tree Commission. His proper title has been a matter of much dispute. The New Jersey Department of Personnel (DOP) has conducted desk audits and appeals have been filed. By letter dated December 23, 1996, the Assistant Commissioner for State and Local Operations issued this ruling:

In regards to Mr. Smith's initial classification as a Tree Surgeon dated October 4, 1995, it is our determination that Mr. Smith served provisionally pending promotional examination procedures in the title, Tree Surgeon from October 4, 1995, until, April 10, 1996, and should be compensated at a higher rate of pay for this timeframe. Subsequently, from April 11, 1996, until the present time he is serving in his permanent title, Tree Trimmer.

Both the County and Council No. 6 appealed this ruling to DOP's Division of Merit Systems Practices and Labor Relations. The County has asserted that Smith should not have been classified as a Tree Surgeon between October 1995 and April 1996 and that, even if this classification was correct, the County as a local employer did not have to pay Smith a higher rate of compensation. Council

No. 6 has contested Smith's classification as a Tree Trimmer effective April 11, 1996. It has not, however, asked the DOP to award Smith higher compensation for the period between October 1995 and April 1996. These appeals are pending.

On July 8, 1997, Council No. 6 demanded arbitration of three grievances. Only one is in dispute here. That grievance is described by the demand for arbitration:

- (a) Pursuant to a desk audit conducted by the State of New Jersey Department of Personnel, Robert Smith, Jr., was found to be working in the title of Tree Surgeon from October 4, 1995 until April 10, 1996. The title of Tree Surgeon is a four step promotion from the title of Tree Trimmer which Mr. Smith held. According to Article 18, Section 3 of the collective bargaining agreement between Morris Council No. 6 and the County of Morris, an employee is entitled to a five percent salary increase for each level of promotion. The County has failed and/or refused to pay Mr. Smith the appropriate salary for the position of Tree [Surgeon] for the period October 4, 1995 to April 10, 1996. [Emphasis in original]

This petition ensued.

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 this grievance or any contractual defenses. We specifically do not consider whether the grievance is contractually arbitrable.

The County asserts that this dispute is not legally arbitrable because DOP has jurisdiction to determine whether Smith was properly classified as a Tree Surgeon between October 4, 1995 and April 10, 1996. We agree that an arbitrator cannot second-guess DOP's rulings in classification appeals. Compare Woodbridge Tp., P.E.R.C. No. 89-63, 15 NJPER 25 (120010 1988) (DOP must determine an employee's demotional rights). At present, however, Council No. 6's claim is consistent with DOP's ruling about Smith's status between October 1995 and April 1996. Council No. 6 does not seek to displace that ruling; it merely seeks the higher compensation allegedly required by the parties' contract for service in the higher classification approved by DOP. The County has asserted that even if Smith was properly classified as a Tree Surgeon for the disputed period, he is not entitled to that higher compensation. The question of whether this employer contractually obligated itself to pay the higher compensation to Smith, given a classification of Tree Surgeon, is legally arbitrable and is for the arbitrator to decide.

ORDER

The request of the County of Morris for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Buchanan abstained from consideration. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997