P.E.R.C. NO. 2003-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LINCOLN PARK,

Petitioner,

-and- Docket No. SN-2002-75

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 74, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Lincoln Park for a restraint of binding arbitration of a grievance filed by the Service Employees International Union, Local 74, AFL-CIO. The grievance asserts that the Borough violated the parties' collective negotiations agreement by not filling the position of Supervisor, Recreation Maintenance and by not paying an employee a higher rate of compensation for the duties he allegedly performed in that capacity. The Commission restrains arbitration over the claim that the position must be filled since such claims are non-negotiable. The Commission also restrains arbitration over the claim that the position must be reclassified since the Department of Personnel has rejected that claim and an arbitrator cannot second-guess DOP's rulings in classification appeals. The Commission also restrains arbitration over the compensation claim because it is not separable from the claim that the employee's title must be reclassified and would also require an arbitrator to second-guess DOP's ruling.

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, Grotta, Glassman & Hoffman, P.A.
(David S. Fish, on the brief)

For the Respondent, O'Dwyer & Bernstein, LLP
(Raul Garcia, on the brief)

DECISION

On June 27, 2002, the Borough of Lincoln Park petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Service Employees International Union, Local 74, AFL-CIO. The grievance asserts that the Borough violated the parties' collective negotiations agreement by not filling the position of Supervisor, Recreation Maintenance and by not paying Daniel Smith a higher rate of compensation for the duties he allegedly performed in that capacity.

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

Local 74 represents clerical and public works employees. The parties' collective negotiations agreement is effective from January 1, 1999 through December 31, 2002. The grievance procedure ends in binding arbitration. The Borough is a Civil Service jurisdiction.

Article 6 details the grievance procedure. Section F provides:

> Notwithstanding any foregoing provisions to the contrary, it is the intent of the parties that no matter in dispute that is subject to the review and/or the decision of the Civil Service Commission of the State of New Jersey may be submitted to arbitration. The parties hereby direct the arbitrator not to accept or to decide any matter in dispute that is subject to Civil Service Commission Review and Decision.

Article 1 is the recognition clause. Local 74 represents employees in the public works department, including employees holding the titles of Recreation & Park Maintenance Worker, Recreation & Park Maintenance Supervisor, and Senior Public Works Repairer.

Article 10 sets forth wage increases. It also provides that a employee promoted or changed to a higher classification shall receive an increase of $500 which shall become part of his or her base salary on appointment to the new classification.

Article 32 is entitled Work in a Higher Classification. It provides:

> If an employee is assigned to a higher classification for more than one (1) week due to a position vacancy or an employee's extended illness or injury, said employee shall be

> placed at the bottom scaling of the higher classification resulting in a pay increase until the vacancy is filled or an absent employee returns to work.

Daniel Smith is classified as a Senior Park Maintenance Worker in the public works department. He asked that the Department of Personnel (DOP) conduct a classification review and reclassify him as a Supervisor, Recreation Maintenance. Smith asserted that he acts as a supervisor by scheduling and assigning work and having employees report back to him each day.

DOP's Division of Human Resources Management (DHRM) conducted a desk audit and denied Smith's request. Smith appealed that determination to DOP.

On October 4, 2001, DOP denied Smith's reclassification appeal. DOP reasoned, in part:

> In the present matter, the DHRM found that based on appellant's assigned duties and responsibilities which include the maintenance and repair tasks at recreation facilities and parks while taking the lead over a small group of employees at various times during the year, the appropriate classification of his position is Senior Park Maintenance Worker/Senior Recreation Maintenance Worker.
>
> A thorough review of the record establishes that while appellant claims to supervise, he does not evaluate the performance of subordinate staff, which is a required component of supervision. Thus, his assignment of employees during seasonal activities is, in fact, a leadership responsibility expected to be performed by a Senior Park Maintenance Worker/Senior Recreation Maintenance Worker.
>
> With regard to appellant's statement that the Supervisor, Recreation Maintenance and Senior

> Park Maintenance Worker/Senior Recreation Maintenance Worker job specifications are very similar, it is noted that the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes since, by nature, examples of work may be common to different levels of a title series and are utilized for illustrative purposes only. Moreover, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determination the appropriate level within a given class, and for overall job classification purposes, the definition portion of a job specification is appropriately utilized. In the present matter, since appellant does not supervise a group of employees on a regular or recurring basis, the record does not support a Supervisor, Recreation Maintenance classification.

DOP's decision was a final administrative determination of Smith's reclassification appeal.

On November 19, 2001, Local 74 filed a grievance alleging that the Borough had violated Articles 1 and 32 by not filling the position of Recreation and Park Maintenance Supervisor and by not paying Smith a higher rate of pay.

On November 26, 2001, the Borough's administrator wrote to Local 74 and advised it that "no grievance condition exists" given DOP's ruling rejecting Smith's reclassification appeal.

On December 11, 2001, Local 74 demanded arbitration. It described the dispute as follows:

> The dispute concerns the Borough's failure to properly classify and compensate employee Daniel Smith for his assignment of work. We believe this violates Articles 1, 10 and 32 of our Collective Bargaining Agreement.

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.

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]

The Borough's original brief asserts that Civil Service laws and DOP's final administrative decision preempt any claim that Smith must be reclassified and that Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), establishes that it has a prerogative not to fill the supervisory position. Local 74's brief responds that Smith has been de facto performing the duties of supervisor and his claim for higher compensation for that work is mandatorily negotiable.1/ The Borough's reply brief responds that Smith's grievance focused on his reclassification claim rather then compensation and that the contract provisions calling for higher pay do not apply unless an employee is placed in a higher classification.

We will restrain arbitration over the claim that the position of Supervisor, Recreation Maintenance must be filled. Paterson makes that claim non-negotiable. See also City of Atlantic City, P.E.R.C. No. 2001-56, 27 NJPER 186 (¶32061 2001). We will also restrain arbitration over any claim that Smith's position must be reclassified. DOP rejected that contention and an arbitrator cannot second-guess DOP's rulings in classification appeals. Morris Cty., P.E.R.C. No. 98-83, 24 NJPER 58 (¶29036 1997). Finally, we restrain arbitration over Smith's compensation claim because it is inseparable from the claim that

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1/ This brief acknowledges that Smith does not evaluate employees, but argues that other DPW employees without evaluative responsibilities are paid as supervisors.

his title should be reclassified and thus would require an arbitrator to second-guess DOP's ruling in order for him to prevail. The compensation claim depends upon a finding that he works in a higher classification and DOP has already determined that he does not do such work. City of Hoboken, P.E.R.C. No. 96-7, 21 NJPER 280 (¶26179 1995), and Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), are both distinguishable since neither case involved a DOP classification ruling governing the issues sought to be arbitrated.

ORDER

The request of the Borough of Lincoln Park for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: December 19, 2002
Trenton, New Jersey
ISSUED: December 20, 2002