

P.E.R.C. NO. 89-88

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Petitioner,

-and-

Docket Nos. SN-89-7 & SN-89-9

IBT, LOCAL 723,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of grievances filed by IBT, Local 723 against the County of Essex. The grievances allege that the employees have been underpaid. The Commission finds that demands for compensation higher than statutory minimums are mandatorily negotiable and therefore arbitrable.

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Appearances:

For the Petitioner, H. Curtis Meanor, Acting County Counsel  
(Dennis M. Hultay, Assistant County Counsel, of counsel)

For the Respondent, Goldberger & Finn (Howard A.  
Goldberger, of counsel)

DECISION AND ORDER

On July 14 and August 15, 1988, the County of Essex ("County") filed two Petitions for Scope of Negotiations Determination. The County seeks restraints of binding arbitration of grievances filed by IBT, Local 723 ("Local 723") on behalf of two employees. The grievances allege that the employees have been underpaid.

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

Local 723 represents supervisory employees of the County Welfare Division. The parties have entered a collective negotiations agreement containing salary and compensation provisions and a grievance procedure ending in binding arbitration.

Before 1984, the State Division of Public Welfare ("DPW") exercised vast and strict control over terms and conditions of

employment at county welfare agencies. The instrument of control was a comprehensive regulation known as Ruling 11. See, e.g., CWA v. Union Cty. Welfare Bd., 126 N.J. Super. 517 (App. Div. 1974); State of New Jersey (Dept. of Human Services), P.E.R.C. No. 82-83, 8 NJPER 209 (¶13088 1982). Ruling 11 set maximum and minimum salaries. Collective negotiations agreements had to be approved by the Commissioner of Human Services.

On March 8, 1984, the Legislature authorized county welfare agencies to establish wages through negotiations, without the Commissioner's approval. N.J.S.A. 44:7-6.1. The Commissioner, however, kept authority to establish minimum compensation schedules for each class of positions. The Commissioner did so. N.J.A.C. 4:2-7.1A(b), repealed eff. 9/6/88, 20 N.J.R. 2255(b). The Commissioner's minimum compensation plan set minimum salary ranges for county welfare agencies.

Ferdinand DePhillips holds the permanent title of data processing coordinator. He gained that title in 1979 when the Civil Service Commission reclassified him from principal tabulating machine operator at salary range 13 to data processing coordinator at salary range 14. An internal desk audit has confirmed this title. The minimum salary range for this title is range 21.

On December 16, 1987, DePhillips filed a grievance alleging that he should have been paid at salary range 21, not salary range 14, for the last 16 years. According to Local 723, when DePhillips was finally moved to salary range 21, he should have been placed on

a step with a salary higher, not lower, than his previous range 14, step 9 rate.

After DePhillips filed his grievance, the County's Director of the Division of Welfare called a DPW personnel officer. The County's Director alleges that she was told that the minimum compensation schedule only guaranteed County employees that they would be paid at or above the first step of their salary range and that additional steps only applied to State employees. The County's Director then wrote DPW's Acting Director, asking her to clarify the minimum compensation requirements in DePhillips' case. The Acting Director wrote back that the employer had only to pay an employee at or above the minimum for a particular class or title. A subsequent letter from the Director stated that she had reviewed the current collective negotiations agreement and its salary program did not violate the minimum compensation schedules.

The County's Director denied DePhillip's grievance, reasoning that his salary each year had exceeded the minimum salary for step one of range 21 and thus had satisfied the employer's obligations under State law. The Director of the County's Department of Citizen Services affirmed this ruling. Local 723 sought binding arbitration and petition SN-89-7 ensued.

Edward English is an administrative analyst. On June 9, 1988, Local 723 filed a grievance on his behalf alleging that he has been underpaid since April 1, 1987. The grievance alleges that his salary should have been set at the maximum step (9) of salary range

23 as indicated in the minimum compensation schedule. The grievance claims his salary should have been \$32,551.28, not \$32,044.83. The County's Director denied this grievance, reasoning that English's salary each year exceeded the minimum salary for range 23; that the maximum steps on the schedule applied to State workers only, and that the employer had thus satisfied its obligations under State law. Local 723 sought binding arbitration and petition SN-89-9 ensued.

The County asserts that it is improper for employees to challenge DPW's interpretation of a statute through binding arbitration and that any tensions between DePhillips' 1979 title reclassification and his minimum compensation rights should be resolved through administrative agency channels. Local 723 alleges that the parties' contract and their past practice entitle these employees to payments above the statutory minimum.

Compensation is a mandatorily negotiable subject. Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1 (1973). The grievance does not challenge the assignment of a particular classification or salary range. Local 723's claim that the two employees are contractually entitled to be on higher steps is not preempted by statute or regulation. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978); Teaneck Bd. of Ed. v. Teaneck Teachers' Ass'n, 94 N.J. 9, 15 (1983). We cannot pass on the contractual merits of these grievances. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978). We are

limited to passing on the abstract negotiability of the disputed subjects: demands for compensation higher than the statutory minimum. That subject is mandatorily negotiable and these disputes are thus legally arbitrable.

ORDER

The request for restraints of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Rugiero, and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey  
February 10, 1989  
ISSUED: February 14, 1989