

P.E.R.C. NO. 89-109

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE & DENTISTRY
OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-89-40

TEAMSTERS, LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Teamsters, Local 97 against the University of Medicine and Dentistry of New Jersey to the extent the grievance challenges the employer-set qualifications for emergency medical services dispatcher. To the extent the grievance raises issues beyond the qualifications for EMS dispatcher, it may be subject to arbitral review.

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Appearances:

For the Petitioner, Peter N. Perretti Jr., Attorney General
(Alice J. Guttler, Deputy Attorney General)

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

DECISION AND ORDER

On December 19, 1988, the University of Medicine and Dentistry of New Jersey ("UMDNJ") filed a Petition for Scope of Negotiations Determination. UMDNJ seeks a restraint of binding arbitration of a grievance filed by an employee represented by Teamsters, Local 97 ("Local 97"). The grievance alleges that UMDNJ violated its agreement with Local 97 when it discharged Dennis Terrell, an Emergency Medical Services ("EMS") dispatcher, for failure to maintain Emergency Medical Technician ("EMT") certification.

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

Local 97 represents a unit of non-professional UMDNJ employees. During negotiations leading to their July 1, 1986 to

June 30, 1989 contract, Local 97 and UMDNJ agreed that "grand-fathered" EMS dispatchers would not be required to ride in EMS field units.^{1/} The contract's grievance procedure ends in binding arbitration of discipline and discharge disputes.

UMDNJ's EMS Department is a member of the Regional Emergency Medical Communication System. UMDNJ provides emergency medical services throughout Newark and parts of Essex and Union Counties.

EMS dispatchers accept incoming calls for emergency medical assistance. Dispatchers question callers to learn the problem, the patient's history and the mental status of the caller/patient. Dispatchers then determine whether to send out an Advanced Life Support or a Basic Life Support unit. Dispatchers prioritize calls when there are more calls than available EMS units. Dispatchers tell individuals how to administer first aid while the EMS unit is en route. The EMS dispatcher's job description requires State certification as an EMT.^{2/}

1/ "Grandfathered" dispatchers are those dispatchers that were already at the S-19 salary range when the agreement was reached.

2/ N.J.A.C. 8:40-3.7(c) provides:

Each person who provides patient care (as part of any service licensed under this chapter) shall possess a license, registration, certification or training certificate valid in the State of New Jersey for the type or level of patient care he or she is providing. No person shall be allowed to provide a type or level of patient care beyond the level he or she is lawfully eligible to provide in the State of New Jersey.

Dennis Terrell was employed by UMDNJ as an EMS dispatcher until May 30, 1988 when his EMT certification expired. Terrell had been certified as an EMT since at least June 1973, had passed three EMT recertification exams, and had taken required continuing education courses. Terrell failed a recertifying exam and lost his certification effective May 30, 1988.

On May 13, 1988, UMDNJ offered to transfer him to another position while he sought recertification. Terrell refused and was discharged. He grieved his discharge, asserting that EMT certification was not required since he was not required to ride in an EMS unit.^{3/}

On September 28, 1988, Local 97 demanded arbitration. This petition ensued.

UMDNJ asserts that arbitration of the grievance is preempted by N.J.S.A. 18A:64G-6(i) which empowers its Board of Trustees to hire and discharge employees and to determine qualifications for all positions. Local 97 argues that the discharge was disciplinary and is subject to arbitration. It further argues that UMDNJ negotiated away its right to establish employment criteria for the "grandfathered" EMS dispatchers.

^{3/} Terrell has also sued both UMDNJ and Local 97, in Superior Court, Essex County: Dennis J. Terrell v. Stanley S. Bergen, et al., Docket No. C-16598-88E.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154]

We thus cannot consider whether Terrell's discharge violated the agreement.

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 403-404]

Although we do not find that the statutes and regulations relied upon by the employer are preemptive, see State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978) and Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed. Ass'n, 91 N.J. 38 (1982), the requirement that EMS dispatchers maintain EMT certification is not mandatorily negotiable and may not be challenged in arbitration. An employer has the right to set qualifications for a position and to require that employees maintain their ability to perform their required duties. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Bridgewater Tp., P.E.R.C. No. 84-63, 10 NJPER 16 (¶15010 1983), aff'd 196 N.J. Super. 258 (App. Div. 1984).

There is a difference, however, between the employer's right to set qualifications and an employee's right to arbitrate a discharge. N.J.S.A. 34:13A-5.3 authorizes public employers to agree to binding arbitration of disciplinary disputes, including discharges, as long as the employee does not have an alternate statutory appeal procedure. CWA v. P.E.R.C., 193 N.J. Super 658 (App. Div. 1984). Terrell does not have access to an alternate procedure.

Accordingly, we restrain arbitration to the extent Local 97 seeks to challenge qualifications for EMS dispatcher. But that fact does not warrant a restraint over whether the discharge violated the terms of the labor agreement. UMDNJ apparently offered to transfer Terrell to another position while he sought recertification. After he refused, he was discharged. In a scope of negotiations

proceeding, we do not determine whether an employee was properly discharged. Ridgefield Park. Accordingly, to the extent the grievance raises issues beyond the qualifications for EMS dispatcher, it may be subject to arbitral review.

ORDER

The request for a restraint of binding arbitration is granted to the extent the grievance challenges the employer-set qualifications for EMS dispatcher.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Reid, Ruggiero and Smith voted in favor of this decision. Commissioner Wenzler was opposed. Commissioner Johnson abstained.

DATED: Trenton, New Jersey
April 28, 1989
ISSUED: May 1, 1989