

P.E.R.C. NO. 97-147

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF RAHWAY,

Petitioner,

-and-

Docket No. SN-97-47

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL UNION NO. 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Rahway for a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local Union No. 469. The grievance contests an employee's layoff. The Commission finds that the contractual seniority provisions governing layoffs and recalls are inconsistent with and preempted by N.J.A.C. 4A:8-2.4(a) and that appeals involving the demotional/layoff rights of permanent Civil Service employees must be filed with the New Jersey Department of Personnel.

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, Genova, Burns, Trimboli & Vernioia,  
attorneys (James J. Gillespie, of counsel)

For the Respondent, Hott & Margolis, attorneys  
(Sheldon F. Margolis, of counsel)

DECISION AND ORDER

On November 25, 1996, the City of Rahway petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the International Brotherhood of Teamsters, Local Union No. 469. The grievance contests an employee's layoff.

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

Local No. 469 represents the employees in the City's Department of Public Works and Water Division. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration. Article XIX is entitled Seniority. It provides, in part: "Seniority shall mean a total of all periods of permanent employment within the department

covered by this agreement." Article XX is entitled "Layoffs & Recall." It provides, in part: "[w]hen the Employer reduces the working force, the employee in the classification affected by the layoff, who has the least department seniority, shall be laid off first, provided the remaining employees, within that classification, have the experience, skill and ability to perform the remaining work, without training."

Rahway is a Civil Service jurisdiction. It decided to eliminate several positions for fiscal year 1997 and submitted a proposed layoff plan to the New Jersey Department of Personnel ("DOP") for review. See N.J.A.C. 4A:8-1.4(a). DOP approved the plan and designated the demotional, special reemployment, and seniority rights of all affected employees.

Ed Ott, a recreation maintenance worker, was one of the employees laid off. On August 14, 1996, DOP sent him a letter advising him that his name had been placed on the special reemployment list for the title of recreation maintenance worker, but that there were no demotional or other displacement opportunities available to him. The letter further informed Ott that he could appeal those determinations to DOP's Director of Personnel Management and that he could also appeal whether the layoff was made in good faith to the Merit System Board ("MSB").

By letter dated June 26, 1996, Local No. 469 filed a letter with DOP and MSB contesting both the determination of Ott's demotional/layoff rights and the good faith nature of the layoff.

On September 26, 1996, DOP denied the appeal of Ott's demotional/layoff rights. Local No. 469 appealed that determination to the MSB. That appeal is pending before the MSB as is the appeal alleging that the layoff was made in bad faith.

Local No. 469 also filed a grievance alleging that the City had violated the contractual seniority provisions in laying off Ott. The City denied the grievance, asserting that Ott was an employee of the Recreation Division, Health Department, not the Public Works Department, and thus was not covered by the contract. Local No. 469 demanded arbitration and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

N.J.A.C. 4A:8-2.4(a) defines seniority as "the amount of continuous permanent service in the jurisdiction, regardless of title." The contractual seniority provisions governing layoffs

and recalls are inconsistent with and preempted by this definition. Further, we have restrained binding arbitration of grievances involving the demotional/layoff rights of permanent Civil Service employees with statutory appeal rights. See Woodbridge Tp., P.E.R.C. No. 89-122, 15 NJPER 327 (¶20145 1989); Woodbridge Tp., P.E.R.C. No. 89-63, 15 NJPER 25 (¶20010 1988); Hudson Cty., P.E.R.C. No. 88-142, 14 NJPER 463 (¶19193 1988). We will therefore restrain arbitration of this grievance.

ORDER

The request of the City of Rahway for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997  
Trenton, New Jersey  
ISSUED: June 20, 1997