

P.E.R.C. NO. 2003-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-42

UNITED ASSOCIATION OF JOURNEYMEN
& APPRENTICES OF THE PLUMBING/PIPE
FITTING INDUSTRY, PLUMBERS LOCAL 24,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Elizabeth Board of Education for a restraint of binding arbitration of a grievance filed by the United Association of Journeymen & Apprentices of the Plumbing/Pipe Fitting Industry, Plumbers Local 24. The grievance asserts that the Board violated the parties' collective negotiations agreement when it refused to treat a plumber who had worked for more than six months as a permanent employee and thus to grant him the benefits contractually due permanent employees. Article VII of the parties' agreement requires the employer to give employees covered by Article VII the same status and benefits accorded all other full-time employees. The Commission concludes that this case is not a promotion case, but involves payment of certain mandatorily negotiable benefits.

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.

P.E.R.C. NO. 2003-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-42

UNITED ASSOCIATION OF JOURNEYMEN
& APPRENTICES OF THE PLUMBING/PIPE
FITTING INDUSTRY, PLUMBERS LOCAL 24,

Respondent.

Appearances:

For the Petitioner, The Murray Law Firm, LLC, attorneys
(Timothy Averell, on the brief)

For the Respondent, Kenneth S. Hall, attorney, on the
brief

DECISION

On February 20, 2003, the Elizabeth Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the United Association of Journeymen & Apprentices of the Plumbing/Pipe Fitting Industry, Plumbers Local 24. The grievance asserts that the Board violated the parties' collective negotiations agreement when it refused to treat a plumber who had worked for more than six months as a permanent employee and thus to grant him the benefits contractually due permanent employees.

The parties have filed briefs and exhibits.^{1/} The Board has submitted the certification of its secretary/school business administrator, Linda G. King. Local 24 has submitted the certifications of its business manager, Mark McManus, and the grievant, Thomas Sedillo.

Local 24 represents full-time permanent plumbers. The parties' contract is effective from July 1, 2002 through June 30, 2004. Its grievance procedure ends in binding arbitration. Temporary employees may not file grievances.

Article VII is entitled Temporary Employees. It provides:

Any temporary employee hired by the Elizabeth Board of Education shall serve as a temporary employee for not longer than one hundred eighty (180) days, or six (6) months, whichever term is longer. In the event that the employee serves beyond the aforementioned time period, the employee will automatically become a permanent employee and shall thereafter be entitled to all the benefits that other permanent bargaining unit employees are entitled to.

A temporary employee will receive the same wages as permanent bargaining unit employees plus Welfare and Pension benefits paid directly to the Union Local.

A temporary employee shall be entitled to the paid holidays set forth in this Agreement, provided the holiday occurs during

^{1/} Local 24 filed a sur-reply. The Board objected to acceptance of that submission. N.J.A.C. 19:13-3.5(c) does not provide for additional submissions without leave of the Chair or Commission designee. No such leave was requested. Accordingly, the Chair informed Local 24 that its additional submission would not be considered.

the period of temporary employment. A temporary employee is not entitled to any paid vacation or sick leave.

According to King, the Board hires permanent plumbers to replace permanent plumbers who resign, retire or are terminated. It also hires plumbers as temporary employees when the number of permanent plumbers is insufficient to complete short-term or long-term projects, and it sometimes uses plumbers in the pool of temporary employees to replace permanent plumbers whose employment has ceased. Some temporary projects take more than six months.

On or about October 22, 2000, Local 24 referred Sedillo to the Board. According to McManus and Sedillo, Sedillo was not referred to work on any temporary project and he did the same work as the Board's other full-time plumbers. Sedillo did not receive the same benefits as permanent employees.

Sedillo worked full-time in the Plant, Property and Equipment department. He worked for more than six months, but continued to be treated as a temporary employee. It appears that Sedillo is not working for the Board now, but it is unclear when he stopped working.^{2/}

^{2/} According to King, Sedillo applied for a permanent plumber vacancy, but that position was given to another plumber. However, Local 24 did not allow that other plumber to report to work. King further asserts that the Board wishes to hire another temporary employee, but Local 24 will not refer a temporary employee until Sedillo is made a permanent

(continued...)

Local 24 filed a grievance asserting that the Board had deprived Sedillo of permanent employment status under Article VII. The grievance sought permanent employment status for Sedillo "including, but not limited to, all wages, benefits, seniority, and other attributes of employment that permanent employees are entitled to, which shall be retroactive to the initial date." The grievance was denied; Local 24 demanded arbitration; and this petition ensued.

Local 24 has also filed an unfair practice charge asserting that Sedillo was laid off for filing this grievance. We do not consider that charge at this time.

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.

2/ (...continued)
employee. McManus denies that the Board asked Local 24 to refer either a permanent or temporary plumber and states that if he had been asked, he would have referred Sedillo back to the Board.

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

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]

No statute or regulation is asserted to preempt enforcement of Article VII. We thus proceed to balancing the employees' interests in arbitrating Sedillo's claim under Article VII against the employer's interests in acting unilaterally despite its alleged agreement.

The employees' interests in seeking to enforce Article VII are economic and center on settled terms and conditions of employment - e.g., paid vacation and sick leave and other contractual benefits and grievance procedures granted permanent

employees, but not temporary employees. See Englewood Bd. Of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 7 (1973); Burlington Cty. College Faculty Ass'n v. Board of Trustees, 64 N.J. 9, 14 (1973); State of New Jersey (Dept. of Corrections) v. CWA, 240 N.J. Super. 26 (App. Div. 1990); N.J.S.A. 34:13A-5.3. Employees have a significant interest in negotiating over the timelines for determining when they will receive the full contractual benefits and job protections accorded permanent employees. See, e.g., Wright v. City of E. Orange Bd. of Ed., 99 N.J. 112 (1985) (job security for custodians); Plumbers & Steamfitters Local No. 270 v. Woodbridge Bd. of Ed., 159 N.J. Super. 83 (App. Div. 1978) (job security); Wall Tp., P.E.R.C. No. 92-95, 18 NJPER 165 (¶23079 1992) (salary upgrade for employees completing a year of probationary service).

Article VII requires the Board to give employees covered by Article VII the same status and benefits accorded all other full-time employees. The employer's interest in not according the status and benefits of other full-time employees appears to focus on mandatorily negotiable issues of labor costs and grievance procedures. Article VII does not apply to changes in titles or positions and instead assumes that an employee continues to do the same work after six months as the employee had done before and is now entitled to be paid certain benefits. This is not a promotion case; it is a payment case. Wall Tp. Contrast and

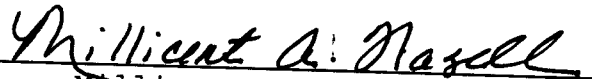
compare Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992) (clause requiring promotion to higher title after one year is not mandatorily negotiable, but salary for employees who have attained one year of permanent service is mandatorily negotiable).

On balance, we conclude that Article VII is mandatorily negotiable. Local 24 may seek to enforce it through binding arbitration.

ORDER

The request of the Elizabeth Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: June 26, 2003
Trenton, New Jersey
ISSUED: June 27, 2003