

P.E.R.C. NO. 2003-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY SUPERINTENDENT
OF ELECTIONS,

Petitioner,

-and-

Docket No. SN-2003-55

AFSCME, COUNCIL 71, LOCAL 1911,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Camden County Superintendent of Elections for a restraint of binding arbitration of a grievance filed by AFSCME, Council 71, Local 1911. The grievance contests the County's refusal to pay an employee a full step salary increase which was allegedly promised when she was promoted to a higher classification. The Commission concludes that this case involves the fundamental interest in employees in seeking to negotiate over the compensation they are to be paid for the work they are to do.

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, Frederick J. Schuck, County Counsel
(Catherine Binowski, Assistant County Counsel, on the
brief)

For the Respondent, Susan H. Owen, AFSCME Staff
Representative, on the brief

DECISION

On March 27, 2003, the Camden County Superintendent of Elections petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by AFSCME, Council 71, Local 1911. The grievance contests the County's refusal to pay an employee a full step salary increase which was allegedly promised when she was promoted to a higher classification.

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

Local 1911 represents certain employees in the office of the County Superintendent of Elections, including senior clerks

and principal clerks. The parties' collective negotiations agreement is effective from January 1, 1999 through December 31, 2002. The agreement contains salary scales for unit positions for each year of the contract. The grievance procedure ends in binding arbitration.

Dorothy Steward is employed by the County as a principal clerk. She has worked for the County for 27 years.

In June 1996, Steward was promoted from senior clerk to principal clerk. In July 2002, she was promoted to the classification of A-15 of the principal clerk title and her salary was increased to \$34,127 (A-15-8). At that time Richard Wooster was the superintendent and Patricia Strippoli was the deputy superintendent. Wooster was replaced by Phyllis Pearl in July 2002 and Strippoli retired in August 2002.

On September 26, 2002, Steward filed a grievance alleging that the superintendent violated the parties' contract -- specifically the preamble and salary scales -- by not honoring a promise allegedly made by Wooster and Strippoli when Steward was promoted to the A-15 classification in July 2000. The alleged promise was that Steward would be paid the maximum salary for the A-15 classification (A-15-max) as soon as the budget contained enough money to allow such an increase. Steward received yearly increases called for by the contract in 2000 and 2001, but is still not being paid the maximum amount for her classification.

The record does not suggest that there would be any difference in Steward's duties if she received the maximum salary for the A-15 classification.

On January 21, 2003, a grievance hearing was conducted. Steward and Strippoli stated that when Steward was promoted, she was promised that she would be paid the maximum salary when there was enough money in the budget. They also stated that after Steward was promoted, other employees received salary increases and one employee was transferred from the County Clerk's office into the department; Steward concluded that the budget had enough money in it for her to be paid the maximum salary. Pearl testified that she was not made aware of any promise when she became superintendent and Steward's personnel file did not document any promise.

The hearing officer found that the grievance was untimely, but denied it on the merits. He reasoned:

[Even] if the alleged promise was made the specific language of the Contract does not require Ms. Steward to be given the maximum rate of pay permitted and her acceptance of the promotion and salary in July, 2000 does not support a claim for any increased salary thereafter. Further, the alleged terms of the promise can only be characterized as vague and ambiguous since the budgetary conditions upon which any increase would be granted were not defined or delineated.

On March 1, 2002, Local 1911 demanded arbitration. The demand for arbitration lists the grievance to be arbitrated as "Preamble and Salary Scale year 2002." 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 the grievance or any contractual defenses the parties 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 preemption claim is made so we will focus on applying the balancing test to the facts of this case. City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998).


We hold that the employees' interests in seeking enforcement of the alleged promise outweigh the employer's interests in acting unilaterally despite the alleged agreement. The employer has a prerogative to promote employees to higher job classifications and new duties. See, e.g., State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978). But this case does not involve an attempt to gain a higher title or classification nor does it involve any change in duties. Instead, it centers on the fundamental interest of employees in seeking to negotiate over the compensation they are to be paid for the work they are to do. See, e.g., Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322 (1989); Wall Tp., P.E.R.C. No. 92-95, 18 NJPER 165 (¶23079 1992) (holding that claim seeking pay upgrades is mandatorily negotiable and rejecting defense that employer had prerogative to promote); cf. Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000) (initial placement on salary guide presents a

mandatorily negotiable claim). Once the employer decided to promote Steward to the A-15 classification, the question of her salary scale placement was negotiable and the parties could agree that she should be placed at the top of the scale and that such placement would be deferred until there was sufficient money in the budget. We reiterate that we do not consider whether there was any such agreement -- that question is for the arbitrator.

ORDER

The request of the Camden County Superintendent of Elections for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

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

