

P.E.R.C. NO. 2003-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. SN-2003-7

IFPTE, LOCAL 196, CHAPTER 5,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Asbury Park for a restraint of binding arbitration of a dispute between the City and IFPTE, Local 196, Chapter 5. Local 196 alleges that the City violated the parties' collective negotiations agreement in its treatment and payment of Dina Todd. The Commission restrains arbitration over any challenge to the City's prerogatives to abolish positions and transfer duties.

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 & Vernoia, attorneys
(Brian W. Kronick, on the brief)

DECISION

On August 8, 2002, the City of Asbury Park petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a dispute between the City and IFPTE, Local 196, Chapter 5. Local 196 alleges that the City violated the parties' collective negotiations agreement in its treatment and payment of Dina Todd.

The City has filed a brief and exhibits. Local 196's brief was due on August 23, 2002. On September 11, the Commission Case Administrator advised Local 196 that its brief was due within seven days, together with a motion to have the brief accepted as timely filed and an affidavit or certification establishing good cause, or the matter would be considered without argument from Local 196.

On September 29, 2002, Local 196 filed a letter brief. No motion, affidavit or certification accompanied the brief.

On October 3, 2002, the Chair advised Local 196 that its brief would not be accepted. These facts appear.

The City is a Civil Service community. Local 196 represents certain City employees, excluding supervisors. The City and Local 196 are parties to a collective negotiations agreement effective until December 31, 2003. The grievance procedure ends in binding arbitration.

The City abolished Dina Todd's administrative analyst position and special event coordinator duties and transferred her to a clerk typist position. Her rate of pay was not decreased.

Todd appealed the elimination of her position and transfer to clerk typist. An administrative law judge denied that appeal. Todd has appealed that determination to the Department of Personnel. It also appears that Todd has requested a desk audit by the Department.

On February 6, 2002, Local 196 demanded arbitration. The issue to be arbitrated was set forth as "Whether the City violated the collective bargaining agreement in the treatment and payment of Dina Todd."^{1/} This petition ensued.

In April 2002, the arbitrator decided a related grievance and found that the City had a right to transfer the special events coordinator duties for which Todd had been paid a stipend.

^{1/} It is not clear from this record whether a grievance was filed first, or whether Local 196 sought arbitration directly. No grievance documents have been filed.

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 any contractual defenses the employer 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]

The City argues that this is another attempt by Todd to seek reclassification of her title. It asserts that arbitration


should be restrained because it has a managerial prerogative to abolish positions and transfer duties. The City also argues that reclassification of a position/title falls under the jurisdiction of the Department of Personnel and that arbitration is preempted by DOP statutes and regulations.

We restrain arbitration over any challenge to the City's prerogatives to abolish positions and transfer duties. Cf. Borough of Lincoln Park, P.E.R.C. No. 2003-36, ___ NJPER ___ (¶____ 2002) (arbitrator may not second-guess Department of Personnel determination that position was abolished in good faith).

ORDER

The request of the City of Asbury Park for a restraint of binding arbitration over the decisions to abolish Dina Todd's administrative analyst position and to transfer her to a clerk typist position is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Buchanan abstained from consideration. Commissioner Katz was not present.

DATED: January 30, 2003
Trenton, New Jersey
ISSUED: January 31, 2003

