

P.E.R.C. NO. 2005-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC VALLEY WATER COMMISSION,

Petitioner,

-and-

Docket No. SN-2005-039

C.W.A. LOCAL 1032, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Passaic Valley Water Commission for a restraint of binding arbitration of a grievance filed by C.W.A. Local 1032, AFL-CIO. CWA seeks compensation for an employee who has allegedly been performing duties in a higher classification for over four years. The Commission concludes that CWA may seek to enforce an alleged contractual obligation to compensate an employee for higher-title work that he maintains he performed. The existence of Department of Personnel promotional or classification issues does not make the compensation claim non-arbitrable as long as the grievance does not challenge the employer's prerogative to make a promotional decision.

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, Pashman Stein, PC, attorneys
(Samuel J. Samaro, on the brief)

For the Respondent, Weissman & Mintz, LLC, attorneys
(Rosemarie Cipparulo, on the brief)

DECISION

On January 6, 2005, the Passaic Valley Water Commission petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by C.W.A. Local 1032, AFL-CIO. CWA seeks compensation for an employee who has allegedly been performing duties in a higher classification for over four years.

The parties have filed briefs and exhibits. CWA has submitted the certification of Rocco Cammalleri, the grievant. These facts appear.

The Water Commission is a Civil Service employer. CWA represents blue and white collar employees. Prior to November 2003, these employees were represented by Teamsters Local 97 and

IUPCPE Local 911. The most recent agreement expired on December 31, 2002. The terms of that agreement continue in effect while the Water Commission and CWA are negotiating a successor agreement.

Article VII, Section 4 of the most recent agreement provides:

No employee shall perform the duties of a higher classification except during the qualifying period or during emergencies, or to fill in for sickness, vacation or other absence of a higher classified employee. Whenever an employee shall have performed the duties of a higher classification for twenty (20) accumulated working days within a sixty (60) day period (vacation periods excepted), he shall receive the starting rate for the higher classification or the step above his old rate, whichever is higher, but not to exceed the maximum for the new classification.

Rocco Cammalleri was employed as a Laborer in 1990. In 1999, he was promoted to Water Repairer.

According to Cammalleri, in 1999 several Senior Water Repairers left employment with the Water Commission. Cammalleri states that although some of the duties of Water Repairer and Senior Water Repairer are the same, Senior Water Repairers perform more difficult work and have additional supervisory duties. He states that he has been performing the duties of a Senior Water Repairer for more than five years, but that he has never been paid for performing those duties. He states that his supervisor wrote to management in November of 2003 seeking a

promotion because he had been performing the supervisory duties for more than a year and he adds that the Water Commission has never denied that he performed the duties of the higher title.

On December 2, 2003, Cammalleri filed a grievance. Citing Section 4, the grievance stated:

I (Rocco Cammalleri) have been performing the duties of a higher classified employee for over (4) years now. And although on numerous occasions I have been put in for promotion I have yet to be given rightly deserved title. Ron Neal has written a letter recommending my consideration for promotion mostly recently on November 4, 2003 and although a meeting with the board of commissioners was scheduled and employees were considered for promotion my name was not on the agenda nor do I think it ever will be.

My current title is (water repairer) the following are what job duties I am performing.

STANDBY FOREMAN
LEAD PLUMBER ON CREW
PERFORMING ALL AND EVERY DUTY ENTAILED BY A
SENIOR WATER REPAIRER INCLUDING ANY DUTIES
BELOW TITLE.

In his certification, Cammalleri states that he filed the grievance seeking pay for performing the out-of-title work. Cammalleri was promoted to the senior title in September of 2004.

The employer denied the grievance as a classification issue under the New Jersey Department of Personnel. On March 3, 2004, CWA notified the employer that it was appealing the "continued violation of the current collective bargaining agreement, whereas . . . [the employer] refuses to provide the additional salary to

employees working in higher titles." On March 8, CWA demanded arbitration. Its demand stated: "the employer has refused to pay the grievant out-of-title pay for work performed over four (4) years, violating the related articles of the current collective bargaining agreement." This petition ensued.

The employer argues that this grievance does not concern compensation for performing out of title work, but rather seeks a promotion to a higher title. It maintains that it has a managerial prerogative to make promotional decisions but that if Cammalleri believes that his job duties had changed to the extent that they were no longer similar to the duties in his pre-promotion classification, he should have asked the Department of Personnel (DOP) to reclassify his position.

CWA accepts DOP's authority to establish job classifications and the employer's prerogative to make promotional decisions. However, it argues that an employer can legally agree to compensate employees for work performed in a higher classification. It maintains that Cammalleri's grievance, the union representative's letter appealing the denial, and the demand for arbitration all seek compensation for such work.

The employer responds that Cammalleri does not allege that he had been temporarily filling in for another employee, but instead alleged that his duties and position had changed, thereby

mandating an increase in salary. It reiterates that the grievance centers on a DOP classification issue.

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 employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets 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]

We have consistently held that contract clauses requiring additional compensation for work performed in a higher title or different job category are mandatorily negotiable and legally arbitrable. City of Trenton, P.E.R.C. No. 2002-23, 28 NJPER 22 (¶33006 2001); City of Garfield, P.E.R.C. No. 2001-5, 26 NJPER 360 (¶31144 2000); City of Newark, P.E.R.C. No. 98-37, 23 NJPER 548 (¶28273 1997); Borough of Rutherford, P.E.R.C. No. 92-80, 18 NJPER 94 (¶23042 1992); Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 App. Div. 1983); East Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990), aff'd NJPER Supp.2d 285 (¶229 App. Div. 1992). Employees have a strong interest in receiving additional pay for performing work of a higher level or different nature than that on which their standard compensation is based. In general, those compensation claims do not significantly interfere with governmental policymaking.

"Out-of-title" grievances may arise in a context where there are also promotional or DOP classification issues. However, such circumstances do not make the compensation claim non-arbitrable, as long as the grievance does not challenge the employer's prerogative to make promotional decisions or seek a result inconsistent with a DOP classification decision. See City of

Garfield (claim that sergeant serving as tour commander should have been paid as lieutenant was legally arbitrable; union abandoned claim that sergeant should have been promoted); Morris Cty., P.E.R.C. No. 98-83, 24 NJPER 58 (¶29036 1997) (union could arbitrate claim that employer was contractually obligated to pay higher compensation to grievant in light of new DOP classification, with which the union agreed).

Within this framework, CWA may seek to enforce an alleged contractual obligation to compensate Cammalleri for higher-title work that he maintains he performed. The claim is severable from his request for a promotion - which the employer has since granted - given that it seeks payment for the period of time prior to his being elevated to a higher title. To the extent that the employer maintains that the grievance does not in fact raise a compensation claim, that is a question for the arbitrator. See City of Garfield.

Similarly, the fact that Cammalleri or CWA may have been able to request a classification review from DOP does not bar arbitration of a claim that the employer had contractually agreed to pay additional compensation for the work Cammalleri performed, separate and apart from whether a reclassification was warranted. Stated another way, the grievance does not seek to enforce an agreement that would conflict with a DOP ruling. Compare Passaic Valley Water Commission, P.E.R.C. No. 2001-20, 26 NJPER 439

(¶31173 2000) (grievance could not challenge DOP ruling not to reclassify position but could seek to enforce alleged agreement for additional compensation for a period of time, after DOP decision, where the employee alleged he filled in for an absent supervisor).

Further, the grievance is legally arbitrable even if, as the employer contends, Cammalleri does not allege that he was temporarily filling in for anyone. The gravamen of out-of-title compensation claims is that the nature of the work performed warrants additional compensation under the parties' contract. Factually, that type of claim is not limited to situations where the grievant was temporarily taking the place of another. See City of Garfield (grievance alleged that tour commander should have been paid at lieutenant's rate); East Brunswick (arbitration award finding that department chairpersons had functioned as supervisors and were entitled to a higher pay rate was within the scope of negotiations).

Finally, arbitration of this grievance does not, as the employer urges, make its promotional authority illusory. Employers have a prerogative to decide whether an individual is qualified to perform the duties of a higher-level position. However, where an employer has assigned higher-level duties to an individual but has not promoted him or her, the employee may seek to be compensated at the negotiated rate established for the

higher position. East Brunswick. Whether Cammalleri performed higher-level duties and whether the contract required that he be compensated, are questions for the arbitrator.

ORDER

The request of the Passaic Valley Water Commission for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: April 28, 2005
Trenton, New Jersey
ISSUED: April 28, 2005