

P.E.R.C. NO. 2006-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY LIBRARY,

Petitioner,

-and-

Docket No. SN-2006-029

OCEAN COUNTY LIBRARY EMPLOYEES
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission concludes that the subject of a grievance filed by the Ocean County Library Employees Association is legally arbitrable. The Ocean County Library sought a determination that the grievance that contested the Library's decision not to appoint a part-time employee to an open full-time position was not mandatorily negotiable and not subject to binding arbitration. The Commission concludes this case does not involve the governmental policy concerns present in a typical hiring or promotion decision, but involves a dispute over the mandatorily negotiable subject of work hours.

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, Citta, Holzapfel, Zabarsky & Simon,
P.C., attorneys (Robert A. Greitz, on the brief)

For the Respondent, Law Offices of Richard M.
Greenspan, P.C. (Julie Pearlman Schatz, on the brief)

DECISION

On September 27, 2005, the Ocean County Library petitioned for a scope of negotiations determination. The Library sought a restraint of binding arbitration of a grievance filed by the Ocean County Library Employees Association. The grievance contested the Library's decision not to appoint a part-time employee to an open full-time position in the Point Pleasant branch.

The parties have filed briefs and exhibits.^{1/} These facts appear.

^{1/} The Library requested oral argument. We deny that request as the matter has been fully briefed.

The Association represents these positions: part-time library assistant, senior library assistant, clerk driver, senior clerk driver, clerk typist, senior clerk typist, account clerk, senior account clerk, public information assistant, graphic artist, senior graphic artist, maintenance repairer, senior maintenance repairer, and security guard. The parties' collective negotiations agreement is effective from June 1, 1999 through March 31, 2002. The grievance procedure ends in binding arbitration.

Article X is entitled Seniority. Sections A provides, in part:

Seniority, which is defined as continuous, unbroken service with the employer, will be given consideration by the employer, with respect to promotions. . . .

Sections B and C provide:

The employer should fill permanent job openings by promoting employees from the next lower job titles, providing those employees possess the requirements enunciated by the New Jersey Department of Personnel's laws and are subsequently certified by that department. In all instances, employees promoted must possess the skill, ability, and knowledge to perform the duties required of the higher rated job. All personnel will be eligible for promotion based upon their skill, knowledge, and ability to perform the work at the discretion of the Library Commission.

If there are two (2) or more employees with the equal skill and ability to perform the

work, at the discretion of the administration, which may not be arbitrarily withheld, the employee with the greatest seniority shall be given preference. If the employee with the greatest seniority cannot perform the higher rated job, once promoted to the higher rated job, then the administration shall promote the employee which it deems to be next eligible.

Article IV is a management rights clause. It provides, among other things, that the Library reserves the right to hire, promote, transfer, assign, reassign, layoff and recall employees.

Elena Roach has been employed by the Library since 1996. Initially, she was a part-time (20 hours per week) Library Assistant in the Brick Township branch. In 1997, she was assigned to the Point Pleasant branch and became a part-time Senior Library Assistant. In 1999, she became a shop steward.

In February or March 2005, a full-time Senior Library Assistant position became available in the Point Pleasant branch. Although the County is a civil service jurisdiction, there was no civil service promotional examination or eligibility list because the position was filled by increasing the work hours of a part-time employee. The position was posted and Roach was not selected for the second round of interviews. The position was given to another part-time Senior Library Assistant who had fewer years of experience than Roach.

On March 28, 2005, the Association filed a Level 3 grievance alleging that Roach had been discriminated against in the selection process because she had filed a PEOSHA^{2/} complaint. The Library Director did not rule on the grievance, asserting that it should have been filed at Level 1 and should have stated the contract article or policy alleged to have been violated. The Association then moved the grievance to the Library Commission. The Commission did not respond so the Association notified the Library that it was submitting the matter to arbitration. As a remedy, the Association sought appointment to the position and backpay.

An arbitration hearing was held on August 2, 2005. The agreed-upon issue was:

Did the Employer violate the Collective Bargaining Agreement by failing to appoint Elena Roach to a full-time position at the Point Pleasant Borough Branch? If so what shall be the remedy?

The Library filed this scope petition on September 27. On October 2, the arbitrator issued his award holding that the Library violated the parties' contract when it denied Roach the position of full-time Senior Library Assistant in March 2005. He ordered the Library to place her in the full-time position and make her whole for any compensation or benefits she was denied.

^{2/} PEOSHA refers to the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

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 merits of the grievance or any contractual defenses the employer might 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 alleged to preempt arbitration of this grievance. We specifically note that Civil Service statutes and regulations dealing with promotions do not apply to the personnel action in question. N.J.A.C. 4A:1-1.3 (promotion in local service means an advancement in title)

The Library argues that it has a managerial prerogative to decide whom to appoint or promote to a full-time position. It further argues that a discrimination claim cannot overcome that prerogative.

The Association argues that the grievance involves neither hiring nor a promotion, but the mandatorily negotiable issue of increasing work hours for a Senior Library Assistant. It asserts that the employer's longstanding practice is to give the most senior part-time employee an increase in work hours if there is an available opening. The Association also argues that the petition must be dismissed as untimely because the arbitrator issued his award shortly after the petition was filed and we do not have authority to vacate an arbitration award.

The petition is not untimely. We will entertain a request for a restraint of binding arbitration anytime before an arbitration award is issued. Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983); New Jersey Hwy. Auth., P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd 29 NJPER 276 (¶82 App. Div. 2003).

Balancing the parties' interests, we conclude that the subject matter of the grievance is mandatorily negotiable and the grievance is thus legally arbitrable. This case does not involve the governmental policy concerns present in a typical hiring or promotion decision. Cf. Rutgers, The State Univ., P.E.R.C. No. 88-73, 14 NJPER 140 (¶19056 1988) (in rendering scope determinations, Commission examines particular record, not labels or other conclusory phrases assigned by parties). The duties of the full-time Senior Library Assistant are the same as the duties of the part-time Senior Library Assistant. The only difference is the work hours of the two positions. Work hours intimately and directly affect employee work and welfare. There is a direct link between total work hours and annual compensation and, as the employer notes in its reply brief, benefits. Given that this decision did not involve an advancement in title under Civil Service regulations, the employee's interest in seeking extra work hours, compensation and benefits outweighs any employer interest in selecting unilaterally which employee will receive the work hours, compensation and benefits of full-time employment. Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, 6-7 (1973); see also Hunterdon Cty. Freeholder Bd. v. CWA, 116 N.J. 322, 331 (1989); Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589, 594 (1980); State v. State Supervisory Employees Ass'n, 78 N.J. 54,

67 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Bd. of Ed. Sec'ys, 78 N.J. 1, 8 (1978); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 12 (1973); cf. Ocean Tp. Bd. of Ed., P.E.R.C. No. 2001-61, 27 NJPER 241 (¶32085 2001) (grievance challenging replacement of full-time cafeteria worker position with two part-time positions was legally arbitrable); Borough of Highland Park, P.E.R.C. No. 90-29, 15 NJPER 606 (¶20251 1989) (union could arbitrate claim that employer was required to split full-time clerical position into two part-time positions so that laid off part-time employee could bump into one of those positions; dominant issue was length of work day for clerical employees).

The County's reliance on Gloucester City, P.E.R.C. No. 2006-3, 31 NJPER 238 (¶91 2005), is misplaced. There, a claim that a promotion was discriminatory did not transform a non-negotiable promotion decision into a negotiable or arbitrable subject. See Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983). Here, the dispute is over the negotiable subject of work hours and the claim of discrimination in the denial of an increase in work hours is legally arbitrable. City of Jersey City, P.E.R.C. No. 2003-31, 28 NJPER 454 (¶33167 2002).

ORDER

The subject matter of the grievance is legally arbitrable.

BY ORDER OF THE COMMISSION

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

ISSUED: December 15, 2005

Trenton, New Jersey