

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOMS RIVER TOWNSHIP,

Respondent,

-and-

Docket No. SN-2008-016

DOVER TOWNSHIP UNIFIED
PROFESSIONALS ASSOCIATION,

Petitioner.

Appearances:

For the Petitioner, Loccke, Correia, Schlager, Limsky &
Bukosky, attorneys (Gregory G. Watts, on the brief)

For the Respondent, Secare, CeLanoy, Martino & Ryan,
P.C., attorneys (Steven Secare, on the brief)

DECISION

On September 20, 2007, the Dover Township Unified Professionals Association and Toms River Township jointly petitioned for a scope of negotiations determination.^{1/} During negotiations for a successor contract, the employer asserted that it had a managerial prerogative to place new employees anywhere within the salary range for their job titles. We hold that the employer does not have such a prerogative.

^{1/} N.J.A.C. 19:13-3.1 provides that in the case of a jointly filed petition, the petitioner is the party contending that the disputed matter is within the scope of collective negotiations and the respondent is the other party.

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

The Association represents full-time, white-collar employees employed by the Township and the Township Board of Fire Commissioners, Districts 1 and 2. The parties' most recent collective negotiations agreement expired on June 30, 2006. The parties reached a Memorandum of Agreement for a successor agreement on June 26, 2007. Item no. 23 of the Memorandum provides:

The parties agree to mutually via Scope of Negotiations to resolve the issue of whether the Employer has the authority to hire and place a person anywhere within the established Salary Range of the Job Title to which the person is hired.

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."

We do not consider the wisdom of a proposal, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

_____The Township wishes to determine unilaterally the initial step within the salary range for newly-hired employees. It argues that in certain circumstances it may be difficult to find a particular employee with sufficient qualifications or, where employees with the particular qualifications needed are rare,

that additional incentives are needed to hire qualified individuals. The Township maintains that such decisions are a managerial prerogative.

The Association argues that salary guide placement is a term and condition of employment and that an employer cannot place new hires on any step within the salary range at its sole discretion.

Applying the negotiability balancing test articulated in Local 195, IFPTE v. State, 88 N.J. 393 (1982), we and the courts have long held that initial salary guide placement is, in general, mandatorily negotiable. This compensation issue intimately and directly affects employee work and welfare and does not significantly interfere with any governmental policy determinations. See, e.g., Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 25 N.J. 357 (1999). There may be circumstances where a public employer may need the flexibility to offer inducements necessary to attract needed staff, but any such circumstances would be rare and must be based on a particular proven need. See Vernon Tp. Bd. of Ed., P.E.R.C. No. 2001-49, 27 NJPER 130 (¶32049 2001) (initially denying restraint of arbitration where employer claimed shortage of math and science teachers); Marlboro Tp. Bd. of Ed., P.E.R.C. No. 2002-61, 28 NJPER 222 (¶33078 2002) (initially denying restraint of

arbitration where employer claimed critical shortage of world language teachers). Thus, we deny the employer's request that we declare that it has a broad managerial prerogative to set initial salary guide placement. It may seek flexibility in initial salary guide placement through the negotiations process. As in Vernon and Marlboro, should the employer be unable to hire qualified staff without deviating from a negotiated salary guide, should it be unable to reach an accommodation with the Association, and should the Association seek binding arbitration, the employer may file a new scope petition based on those particular facts.

ORDER

The Township of Toms River does not have a managerial prerogative to place new employees anywhere within the salary range for their job titles.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: November 20, 2007

Trenton, New Jersey