

P.E.R.C. NO. 2010-40

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Petitioner,

-and-

Docket No. SN-2009-053

HOBOKEN MUNICIPAL SUPERVISORS  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the City of Hoboken's request for a restraint of binding arbitration of a grievance filed by the Hoboken Municipal Supervisors Association. The grievance asserts that the City's Chief Financial Officer is entitled to overtime pay for attendance at City Council meetings. The City argues that the CFO is not in the Association's negotiations unit. The Commission holds that the dispute over the reach of the existing contractual recognition clause does not present a negotiability dispute and the arbitrator may determine if the CFO is included in the unit and, if so, whether he is entitled to the claimed overtime compensation.

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, Scarinci Hollenbeck, attorneys  
(Bruce W. Padula, on the brief)

For the Respondent, C. Elston & Associates, LLC,  
attorneys (Catherine M. Elston, on the brief)

DECISION

On February 24, 2009, the City of Hoboken petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Hoboken Municipal Supervisors Association. The grievance asserts that Chief Financial Officer ("CFO") George Destefano is entitled to overtime pay for attendance at City Council meetings.

The parties have filed briefs and exhibits. The Association filed a certification from the CFO. These facts appear.

The parties' collective negotiations agreement is effective from July 1, 2005 through June 30, 2008. The grievance procedure ends in binding arbitration.

Article I provides that the City recognizes the Association as the exclusive bargaining agent for all "non-uniformed employees in the bargaining unit as listed in Appendix A." The Appendix lists 54 job titles, but not the CFO. Article XV describes overtime compensation and allocation.

According to his certification, Destefano has been an Association member since he became Hoboken's CFO in 1994 and began paying membership dues. He asserts that he was not employed by Hoboken between 2002 and 2006 because he was unlawfully terminated. Since he was reinstated as CFO, he has continued to pay Association membership dues. He states that he has attended Association meetings and has voted as a member. In 2001, Destefano submitted a claim for overtime compensation that the City paid.

The Association's demand for arbitration recites that Destefano was required to attend City Council meetings beginning in February 2009 and should receive overtime for all such hours. 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 merits of the grievance or any contractual defenses the employer might have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (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.

The City contends that the CFO is not in the Association's negotiations unit as his title is not listed in Appendix A. Accordingly, it asserts that the grievant is not a member of the unit represented by the Association and has no right to arbitrate an alleged violation of the agreement. The City argues, citing cases setting forth general negotiability standards, that the

grievance is non-negotiable and that the Commission is compelled by "law, public policy, and fairness" to restrain arbitration.

The Association responds that Appendix A is not solely determinative of membership in the unit. It notes the City's treatment of Destefano as a unit member and points to a "401k Report" attached to the CFO's certification listing Destefano and others whom the Association asserts are all members of the unit. The Association contends that the "401k Report" is part of the agreement.

The City replies that the 401k Report is not part of the agreement and that the CFO is not in the unit.

We have previously held that an arbitrator may interpret a contractual recognition clause and determine whether an employee is covered by the agreement. In City of Hoboken, P.E.R.C. No. 96-16, 21 NJPER 348 (¶26214 1995), aff'd 23 NJPER 140 (¶28068 App Div. 1996), the employer asserted that when performing certain duties, an employee was not a member of the negotiations unit as defined by the recognition clause and his claim for overtime was not arbitrable. The employer's assertion depended on an interpretation of the recognition clause, and a factual determination as to whether the grievant was performing duties covered by the agreement. We held that those questions were properly before an arbitrator.

We reach the same result here. This dispute over the reach of the existing contractual recognition clause does not present a negotiability issue and the Association's overtime compensation claim is legally arbitrable. See also Sussex Cty. Voc. School Bd. of Ed., P.E.R.C. No. 2005-17, 30 NJPER 407 (¶132 2004) (claim that nurse was not covered by recognition clause arbitrable); Spring Lake Borough, P.E.R.C. No. 2003-38, 28 NJPER 579 (¶33180 2002). An arbitrator may determine if the CFO is included in the unit and, if so, whether he is entitled to the claimed overtime compensation.

ORDER

The request of the City of Hoboken for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins recused himself.

ISSUED: November 24, 2009

Trenton, New Jersey