P.E.R.C. NO. 2010-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PARSIPPANY-TROY HILLS,

Petitioner,

-and- Docket No. SN-2009-065

PARSIPPANY PUBLIC EMPLOYEES LOCAL 1,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Township of Parsippany-Troy Hills' request for a restraint of binding arbitration of a grievance filed by Parsippany Public Employees Local 1. The grievance asserts that the Township's denial of a light duty assignment to an employee violates the parties' collective negotiations agreement. The Commission holds that where the employer permits light duty, the assignment of available light duty work to qualified employees is negotiable and legally arbitrable.

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, Knapp, Trimboli & Prusinowski, LLC, attorneys (Stephen E. Trimboli, on the brief)

For the Respondent, Castronova McKinney, attorneys (Thomas A. McKinney, on the brief)

DECISION

On March 18, 2009, the Township of Parsippany-Troy Hills petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Parsippany Public Employees Local 1. The grievance asserts that the Township's denial of a light duty assignment to an employee, which required the employee to use leave time, violates the parties' collective negotiations agreement. We hold that where the employer permits light duty, the assignment of available light duty work to qualified employees is negotiable and the grievance is, therefore, legally arbitrable.

The parties have filed briefs and exhibits. Local 1 has submitted a certification from its President, Sam Poff. These facts appear.

Local 1 represents the Township's blue collar employees. The parties' collective negotiations agreement is effective from January 1, 2004 through December 31, 2006. The grievance procedure ends in binding arbitration.

Article II is a Management Rights clause. It provides, in pertinent part:

> If an employee cannot perform his/her normal duties because he/she is on "light duty," that employee can be placed on any job within the department he/she is qualified to do with 24 hours notice. If the normal two-week notice is given the employee can be placed in any department.

The Township operates a recycling center. When an employee in the Department of Public Works is injured, he or she is assigned light duty in the recycling center. Light duty assignments are also available in yard detail.

On or about November 13, 2008, a Department of Public Works employee requested and was denied a light duty assignment. The Township denied the light duty assignment because the employee was not injured on the job.

On November 13, 2008, Local 1 filed a grievance contesting the denial of the light duty assignment and seeking the reimbursement of leave time the employee used while injured. On

January 12, 2009, the grievance was denied. Local 1 demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.
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> [Id. at 154]

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 Township asserts that because the grievance does not allege that a light duty assignment was available, arbitration of the grievance would infringe on its managerial prerogative to create light duty assignments.

Local 1 responds that the Township always has light duty assignments available in the recycling center or yard detail and, therefore, the denial of an available light duty assignment for which an employee was qualified is arbitrable as is a claim for the restoration of contractually-accrued leave used for that time period.

The Township replies that even if it has always provided light duty assignments in the past, it cannot be bound to always do so in the future. The Township further replies that this arrangement would interfere with its right to determine what work constitutes a light duty assignment, the number of light duty assignments, whether to permit light duty, and the qualifications for light duty assignments.

We have long held that an employer is not required to negotiate over permitting employees to return to work on light duty. To do so would significantly interfere with the employer's prerogative to determine job qualifications. City of Camden,

P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982) (requiring employer to create limited duty position until officer was certified to return to duty was not mandatorily negotiable).[1/] For similar reasons, we have also restrained arbitration demanding that an employer create light duty assignments. Ewing Tp., P.E.R.C. No. 97-9, 22 NJPER 283 (¶27153 1996); City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992).

However, where an employer offers light duty, whether by policy or practice, we have declined to restrain arbitration of grievances asserting that qualified employees were denied available light duty assignments. Ewing Tp.; Franklin Tp., P.E.R.C. No. 95-105, 21 NJPER 225 (¶26143 1995) (the employer does not have a prerogative to limit light duty assignments to accommodate on-the-job injuries); City of Englewood, P.E.R.C. No. 94-114, 20 NJPER 257 (¶25128 1994); City of Englewood, P.E.R.C. No. 93-110, 19 NJPER 276 (¶24140 1993). Once an employer decides to permit light duty, the allocation of available light duty assignments is a mandatorily negotiable issue analogous to the allocation of overtime work. South Brunswick Tp., P.E.R.C. No. 2001-35, 27 NJPER 40, 42 (¶32021 2000). Our rulings are grounded on the understanding that the employer has the prerogatives to

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1/ An employer must, however, comply with any relevant provisions of the American With Disabilities Act, 42 U.S.C. §126 et seq. and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

determine whether to permit light duty assignments, the number of employees on light duty at any given time, what assignments are available as light duty, and the minimum qualifications required to perform light duty assignments. Little Falls Tp., P.E.R.C. No. 2009-5, 34 NJPER 224 (¶77 2008). Within the confines of these prerogatives, Local 1 may arbitrate its claim that a qualified employee was denied an available light duty position. Borough of Belmar, P.E.R.C. No. 2000-4, 25 NJPER 367 (¶30158 1999).

ORDER

The request of the Township of Parsippany-Troy Hills for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel and Voos voted in favor of this decision. Commissioner Watkins voted against this decision.

ISSUED: February 25, 2010

Trenton, New Jersey