

P.E.R.C. NO. 2010-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HAMMONTON,

Petitioner,

-and-

Docket No. SN-2010-018

SUSAN CARROLL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Town of Hammonton's request for a restraint of binding arbitration of a grievance filed by Town employee Susan Carroll. The grievance contests the employee's layoff, asserting that the Town did not calculate her seniority appropriately for layoff purposes. The Commission holds that the subject of the grievance is preempted by Civil Service regulations.

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, Gruccio, Pepper, DeSanto & Ruth,
attorneys (Stephen D. Barse, of counsel)

For the Respondent, Frank G. Olivo, of counsel

DECISION

On September 23, 2009, the Town of Hammonton petitioned for a scope of negotiations determination. The Town seeks a restraint of binding arbitration of a grievance filed by Town employee Susan Carroll. The grievance contests the employee's layoff, asserting that the Town did not calculate her seniority appropriately for layoff purposes. We restrain arbitration as the subject of the grievance is preempted by Civil Service regulations.

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

The Hammonton White Collar Association represents the Town's white collar employees. The Town and Association entered into a

collective negotiations agreement effective from April 8, 2006 through December 31, 2009. The grievance procedure ends in binding arbitration. Article 7 is entitled Seniority. It provides, in part: "Seniority is defined to mean the accumulated length of continuous full time service with the Town, computed from the last date of hire."

Hammonton is a Civil Service jurisdiction. Susan Carroll is an employee in the Construction Office. Hammonton decided to eliminate five positions for fiscal year 2010 in these departments: Administration, Construction, Municipal Court, and Public Safety. The Civil Service Commission approved the Town's layoff plan. See N.J.A.C. 4A:8-1.4(a). Civil Service then advised affected employees of their displacement and special reemployment rights and their right to appeal the determination of their layoff rights or seniority.

On June 26, 2009, Civil Service sent Susan Carroll a letter advising that as she had no displacement rights, her employment would be terminated on July 27, 2009 and her name would be placed on a special reemployment list. The letter further informed Carroll that she could appeal those determinations to the Civil Service Commission.

By letter dated July 6, 2009, Carroll filed a letter with Civil Service contesting both the determination of her seniority rights and the good faith nature of the layoff. Carroll also filed a grievance alleging that the Town had violated the

contractual seniority provisions when it laid her off. In the Civil Service appeal and grievance, Carroll contends that the Town unilaterally "departmentalized" its seniority calculation, meaning that employee seniority for layoff purposes was calculated by length of service within an affected department rather than a Town-wide basis. Carroll asserts that she has more years of service with the Town than employees in unaffected departments and, therefore, should be entitled to move to an unaffected department and maintain her employment.

The Town denied the grievance, asserting that it abided by the collective negotiations agreement and Civil Service regulations and that Carroll should appeal the layoff through Civil Service and not the contractual grievance procedure. Carroll demanded arbitration and 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.

[Id. at 154]

Thus, we do not consider the merits of this grievance or any contractual defenses the employer may 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]

Where a statute or regulation is alleged to preempt a negotiable term and condition of employment, it must do so expressly, specifically and comprehensively. See Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Assn, 91 N.J. 38, 44-45 (1982).

N.J.A.C. 4A:8-2.4(a) defines seniority as "the amount of continuous permanent service in the jurisdiction, regardless of title." N.J.A.C. 4A:8-1.5(b) states, "in local service, the layoff unit shall be a department in a county or municipality. . . ." Carroll's contractual claim that "departmentalizing" of

seniority violated the contract is preempted by this definition of the layoff unit. More generally, we have restrained binding arbitration of grievances involving the demotional/layoff rights of permanent Civil Service employees with statutory appeal rights. See City of Rahway, P.E.R.C. No. 97-147, 23 NJPER 391 (¶28178 1997); Woodbridge Tp., P.E.R.C. No. 89-122, 15 NJPER 327 (¶20145 1989); Woodbridge Tp., P.E.R.C. No. 89-63, 15 NJPER 25 (¶20010 1988); Hudson Cty., P.E.R.C. No. 88-142, 14 NJPER 463 (¶19193 1988). We therefore restrain arbitration of this grievance.

ORDER

The request of the Town of Hammonton for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: March 25, 2010

Trenton, New Jersey