P.E.R.C. NO. 2012-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Petitioner,

-and- Docket No. SN-2011-029

UNION OF RUTGERS ADMINISTRATORS-
AMERICAN FEDERATION OF TEACHERS,
LOCAL 1766, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Rutgers, The State University for a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators - American Federation of Teachers, Local 1766, AFL-CIO. The grievance asserts that the University violated the parties' agreement when it transferred the grievant to a new work location. The Commission finds that the facts presented by Local 1766 are not sufficient to categorize the reassignment as discipline and the University has a prerogative to evaluate the grievant's performance and reassign her based upon her qualifications.

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, Monica Barrett, Associate General Counsel, of counsel

For the Respondent, Loccke, Correia, Limsky, Bukosky, attorneys (Merick H. Limsky, of counsel)

DECISION

On October 8, 2010, Rutgers, the State University of New Jersey ("University") petitioned for a scope of negotiations determination. The University seeks a restraint of binding arbitration of a grievance filed by the Union of Rutgers Administrators - American Federation of Teachers, Local 1766, AFL-CIO ("Local 1766"). The demand for arbitration filed by Local 1766 asserts that the University violated the parties' agreement when it transferred the grievant to a new work

location.[1/] The parties have filed briefs and exhibits. The University has also filed a certification of the Associate Director Facilities Human Resources. These facts appear.

Local 1766 represents a negotiations unit of the University's regularly-employed administrative employees at four campuses and all field and other locations. The parties entered into a collective negotiations agreement effective from July 1, 2007 through June 30, 2011. The contractual grievance procedure ends in binding arbitration. The contract does not contain any articles directly limiting the University's power to transfer or reassign employees. The contract does contain articles requiring just cause for disciplinary actions, prohibiting specified forms of discrimination, calling for a non-hostile work environment, and addressing University policies and procedures.

The grievant works as an Operations Area Manager in the Facilities Maintenance Service Department. According to a Classification and Recruitment form attached to the University's certification, the grievant was a supervisor overseeing "multiple crafts personnel" and having "sole responsibility for all facets of maintenance operations" in her zone.

1/ While Local 1766 describes the change in the grievant's work location as a "transfer" in its demand for arbitration and the University describes it as a "reassignment" in its papers, the difference in terminology is immaterial to our analysis.

On February 24, 2010, the grievant was reassigned from the Livingston campus to its Cook campus. As established by the certification and exhibits filed by the University, the reassignment resulted in a new work location and reporting relationship, but not in any change in salary, benefits, title, or duties. The certification also states that the reassignment was non-disciplinary, but does not contain any details explaining why she was reassigned.[2/]

On March 12, 2010, Local 1766 filed a grievance. The grievance sought the following relief:

> Made whole in every way, including but not limited to, [grievant] being provided the following: A clear and precise job description. The proper resources and support to allow her to perform her job in a professional manner. A workplace free from discrimination. A safe and healthy workplace, free from all recognized safety hazards, including, but not limited to, violence and the threat of violence.

On April 5, 2010, the Vice-President for University Facilities and Capital Planning conducted a hearing on the grievance. On April 19, the grievance was denied via written report. The report described Local 1766's position as seeking

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2/ Local 1766's brief asserts that the grievant was moved to an isolated location, away from any other employees and without guidance as to what her duties would be, and that she was moved in response to another employee's threat against her. However, Local 1766 has supplied no certifications attesting to these allegations or establishing any other facts. See N.J.A.C. 19:13-3.5(f)1.

the grievant's return to her previous position because she had been unfairly singled out and not given a clear reason why she was moved. The report described the University's position as asserting that the transfer was not disciplinary because the grievant's former shop had a very large number of personnel issues that had become a burden and a distraction to daily operations and her strengths could be better used elsewhere. The report found no evidence of a disciplinary action and concluded that management had the right to reassign the grievant.

On May 17, 2010, a Senior Labor Relations Specialist, held a third-step hearing. On May 27, she issued a report denying the grievance. The report described Local 1766's position as asserting that the reassignment was disciplinary and a form of harassment because it came two years after the grievant attended a non-hostile work environment conference and just days after she complained about feeling threatened by another employee and because management had taken the position that the grievant's shop had a large number of personnel issues and was allegedly seeking to set her up to eliminate her position. The report described the University's position as asserting that the reassignment was not disciplinary and that the grievant was a good employee who needed to be reassigned because the number of complaints and issues in her former shop had reached an unmanageable level and it was easier to reassign one employee

than 18 employees. This report found that the reassignment was not disciplinary or retaliatory and was instead a prudent exercise of management's right to reassign the grieving given the inordinate amount of issues arising within her former shop and the difficulty of moving all the other employees instead of her. Appended to the report was a copy of the Classification and Recruitment form specifying the grieving's daily functions as an Operations Area Manager.

On June 16, 2010, Local 1766 demanded arbitration. It identified this grievance to be arbitrated:

> On or about February 25, 2010 [the grieving] was transferred to a new work location and the functions of her job were changed. The union contends that this transfer was done as a form of discipline as well as continued harassment of [grieving]. The actions of the employer violates the [parties'] Agreement …including but not limited to Article 1 – Recognition, Article 25 –Non-Discrimination, Article 49, University Policies and Procedures and the overall spirit of the negotiated agreement.

The University then filed the instant petition. The University asserts that it has a non-negotiable managerial prerogative to reassign and transfer employees and this particular reassignment cannot be considered disciplinary. Local 1766 emphasizes that its grievance never uses the word "assignment" and thus the case law pertaining to the non-

negotiability of assignments does not apply or preclude arbitration of the contractual issues it has raised.

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.
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> [Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have. However, we squarely reject Local 1766's contention that this dispute is not about the grieving's reassignment to a new work location. Regardless of whether the word "assignment" was mentioned in the original grievance, Local 1766's demand for arbitration makes clear that this dispute is now all about the propriety of the transfer or reassignment. We thus focus on the negotiability of that personnel action.

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.
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> [Id. at 404-405]

No statute or regulation is asserted to preempt arbitration.

Applying the negotiability tests it articulated, Local 195 itself upheld the managerial prerogative of a public employer to make transfer and reassignment decisions as it deems best. See also Ridgefield Park. However, educational employers may agree to arbitrate certain types of disciplinary disputes, including transfers and reassignments that can be categorized as disciplinary based on the facts and assertions in the record. See Bergen Cty. Voc. Schools Dist. Bd. of Ed., P.E.R.C. No. 2005-4, 30 NJPER 296 (¶104 2004).

Based on our review of the record, we apply Local 195's tests and holding and restrain arbitration over the grieving's reassignment to a new work location. The facts in this record are not sufficient to categorize the reassignment as

disciplinary: the reassignment was not triggered by any alleged insubordination or other disciplinary incident and it has not resulted in any adverse effect on the salary, benefits, or other employment conditions. The University has a prerogative to evaluate the grieving's performance as a manager at one location and determine that she would do a better job of managing at another location; such a judgment is evaluative rather than disciplinary in nature. That judgment is not legally arbitrable.

ORDER

The request of Rutgers, the State University for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson and Wall voted in favor of this decision. Commissioner Krengel voted against this decision. Commissioners Jones and Voos recused themselves.

ISSUED: September 22, 2011

Trenton, New Jersey