P.E.R.C. NO. 2012-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MADISON,

Petitioner,

-and- Docket No. SN-2011-043

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Madison for a restraint of binding arbitration of a grievance filed by International Brotherhood of Teamsters, Local 469. The grievance asserts that the Borough made changes to certain unit members' job descriptions without negotiations in violation of the parties' collective negotiations agreement. The Commission holds that to permit an arbitrator to determine whether the licenses are required for the titles would significantly interfere with the Borough';s policy-making power.

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Appearances:

For the Petitioner, Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys (Adam S. Abramson, of counsel)

For the Respondent, Timothy R. Hott, P.C., attorney

DECISION

On November 29, 2010, the Borough of Madison petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by International Brotherhood of Teamsters, Local 469. The grievance asserts that the Borough made changes to certain unit members' job descriptions without negotiations in violation of the parties' collective negotiations agreement. We grant the Borough's request for a restraint.

The Borough has filed a brief and exhibits. Local 469 has filed a brief. Neither party has filed a certification of supporting facts. See N.J.A.C. 19:13-3.5(f)(1). The following facts appear.

Local 469 represents a unit of employees in the Borough's Public Works Department including Foreman-Water Field Operations, Lead Man-Water Utility and Lead Man Operator-Sewer Utility. Local 469 and the Borough are parties to a collective negotiations agreement with a duration from January 1, 2006 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article I is a Recognition clause. Article III, Rates of Pay, section 2 provides:

> Any position not covered by the attached Schedules or any positions which may be established during the life of this Agreement shall be subject to negotiations between the Borough and the Union. The employer maintains the right to create a new classification and rate of pay for that position. In the event of dispute between the Union and the employer regarding such classification and rate of pay, such dispute shall be submitted to grievance procedure for settlement, and if the parties cannot agree, to arbitration.

Article XVIII, Promotions, Demotions and Transfers, section 8 provides:

> The establishment of a Lead Man position on the salary schedule will not affect existing foremen positions in Parks, Roads and Mechanical services. The Borough will do everything it can to fill openings in foremen titles as it has in the past.

In September 2010, the Borough sent memorandum to certain unit employees informing them that the Borough had changed their

job descriptions to require that the employees maintain and use a professional license. The Licensed Water Operator was required to not only possess a valid W3 and T3 Water Distribution and Water Treatment License, but to utilize and maintain the license for which a negotiated $2500 annual stipend would be paid. The Licensed Sewer Operator was required to not only possess a valid C3 Collection License, but to utilize and maintain the license for which a negotiated $2500 stipend would be paid. The Foreman, Water Field Operations was now required to serve as backup in the absence of the Licensed Sewer Operator. The Lead Man, Water Utility was now required to serve as the Licensed Water Operator in the absence of the Foreman, Water Field Operations to carry out all of the responsibilities of a Licensed Water Operator, and to maintain the appropriate licenses for same. The Lead Man, Sewer Utility, was now required to serve as the licensed Sewer Operator and to utilize and maintain a C3 collection license.

The affected employees were requested to forward the Borough copies of their existing licenses and/or certifications which satisfied the revised job descriptions and to sign an acknowledgment of the new job requirements. The employees refused to sign the acknowledgment form as written and refused to provide their certifications to the Borough. On September 24, 2010, Local 469 filed a grievance challenging the revisions to

the job descriptions in violation of the above-listed articles of the parties' agreement. The grievance reads:

> The changes in the job descriptions of the Sewer Water and any other department that falls under the collective [negotiations] agreement violates the ... [collective negotiations agreement]. The insertion of the new requirements alters the current and existing job descriptions and should be negotiated as a new job description. Adjustment- Maintain old job description until new ones are negotiated and agreed to by all parties.

Local 469 demanded binding 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.
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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.

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].

The Borough argues that it has a managerial prerogative to determine the qualifications required for a title and to change a job description to match those qualifications. It further asserts, without citation or certification, that its motivation to change the job qualifications was to ensure that State licensing requirements are met.

The Association responds that the essence of its grievance is that the employer changed the terms and conditions of employment for the employees without negotiations in violation of the parties' agreement.

We restrain arbitration. A public employer has a managerial prerogative to assign employees' job duties related to their normal job functions. City of Newark, P.E.R.C. No. 2011-86, __ NJPER ____ (¶_____ 2011) (City had managerial prerogative to add duties to Head Clinic Nurse Tasks and Standards, but grievance concerning severable issues of pay rates, training, safety and hours of work are negotiable); Rutgers Univ., P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287 1983) (energy management control technicians assigned electrical work); West Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56 (¶11030 1980). A public employer also has a managerial prerogative to determine the qualifications required for a job. Edison Tp., P.E.R.C. No. 2010-39, 356 NJPER 442 (¶145 2009); Tp. of Nutley, P.E.R.C. No. 2010-89, 36 NJPER 229 (¶81 2010). Included in that prerogative is the determination whether a particular license is required or desirable for a position. West Windsor-Plainsboro Bd. of Ed., P.E.R.C. No. 2000-26, 25 NJPER 436 (¶30191 1999).

The requirement to maintain the licenses intimately and directly effects the employees' terms and conditions of employment. On balance, we find that to permit an arbitrator to determine whether the licenses are required for the titles would significantly interfere with the Borough's policy-making power. If Local 469 were permitted to arbitrate its grievance challenging the change in qualifications for the titles, it would

interfere with the Borough's governmental policy objective of operating the Department of Public Works with employees that meet its desired minimum qualification for the titles. See Tp. of Irvington, P.E.R.C. No. 84-35, 10 NJPER 165 (¶15081 1984) (Employer did not violate Act when it required employees to take a pesticide applicators exam).

We are cognizant that the exercise of a managerial prerogative often affect terms and conditions of employment that are severable from the policy decision and are thus subject to negotiations and arbitration. See Elizabeth and Elizabeth Fire Officers Ass'n Local 2040, IAFF, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983) aff'd 198 N.J. Super. 382, 385-386 (App. Div. 1985). The Association has not provided a certification or asserted any severable issues it seeks to arbitrate. The Borough has acknowledged its negotiations obligation of impact issues if they arise.

ORDER

The request of the Borough of Madison for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: December 15, 2011

Trenton, New Jersey