

P.E.R.C. NO. 2014-27

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2013-033

INTERNATIONAL FEDERATION OF  
PROFESSIONAL AND TECHNICAL  
ENGINEERS, LOCAL 200/200A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Jersey Turnpike Authority for a restraint of binding arbitration of a grievance filed by the International Federation of Professional and Technical Engineers, Local 200/200A. The grievance asserts that the Authority violated the parties' collective negotiations agreement when it applied its anti-nepotism policy by transferring an employee and changing her title so that she would no longer work in the division headed by her husband. The Commission finds that even though the employee's husband did not directly supervise her, the Authority's managerial prerogative to determine and apply its anti-nepotism policy to avoid the appearance of impropriety outweighs the employee's interest in not being transferred.

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, McElroy, Deutsch, Mulvaney &  
Carpenter, LLP, attorneys (James E. Patterson, of  
counsel)

For the Respondent, Weissman & Mintz, LLC, attorneys  
(Ira W. Mintz, of counsel)

DECISION

On January 4, 2013, the New Jersey Turnpike Authority filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the International Federation of Professionals and Technical Engineers, Local 200/200A (IFPTE). The grievance asserts that the Authority violated multiple provisions of the parties' collective negotiations agreement when it transferred an employee from the Tolls Department to the Operations Department and changed her title. We grant the Authority's request to restrain arbitration.

The Authority has filed a brief and exhibits. The Authority did not submit a certification.<sup>1/</sup> IFPTE has filed a brief and the certification of the grievant. These facts appear.

IFPTE represents a negotiations unit of Supervisors in multiple Authority departments, as well as Turnpike Division Interchange Managers. The Authority and IFPTE are parties to an Agreement effective from September 24, 2007 through September 23, 2011. The grievance procedure ends in binding arbitration.

The grievant certified that she has been employed in the Tolls Department as a Toll Plaza Supervisor, a career service position, for approximately 19 years. She further certified she has been married to her husband for "many years". She stated that they have worked in the same department for "many years" and for the past nine years he has been employed as the Director of Tolls. She further set out that her husband does not "directly" supervise her, there are two levels of supervision separating him from her, and he does not have authority over her personnel matters. She asserts that issues involving her salary and raises are governed by the Agreement, and that her direct supervisors make personnel determinations including performance evaluations and her supervisors managers make any final personnel determinations. She certifies that the new position represents a

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<sup>1/</sup> N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

decrease in pay amounting to approximately \$6000 per year, including the loss of a shift differential and the opportunity for overtime pay. She further certifies that on or around March 16, 2012, the Authority informed her that due to her relationship with her husband, she was being transferred out of the Tolls Department to the Operations Department as an Operations Administrative Supervisor.

The Authority's anti-nepotism policy became effective October 28, 1991. Section 1.0 "Purpose" states:

It is the goal of the New Jersey Turnpike Authority to avoid creating or perpetuating circumstances in which the possibility of favoritism, conflicts of interest or impairment of efficient operations may occur. The dangers of bias in the form of nepotism in public employment has been well publicized.

Section 2.0 "Policy" of the anti-nepotism policy states that "The Authority will not hire the relatives of current employees" and defines relatives as spouses, among many other relationships. As for employees who become spouses after employment, section 3.0 "Procedure" states:

Should two employees in a reporting relationship become relatives, as defined in this policy, during their employment at the Authority, the choice will be theirs as to which employee accepts a transfer into an available position, suitable to their skill and experience. If, between the two employees, a decision cannot be made, the employee with the least seniority must transfer into the next available position suitable to his or her skill and experience.

The Department Head should contact Human Resources for assistance in facilitating a transfer.

Section XIII (7) of the State Uniform Ethics Code, promulgated by the State Ethics Commission pursuant to N.J.S.A. 52:13D-23, provides "[n]o state officer or employee or special state officer or employee may supervise his/her relative, or exercise any authority with regard to personnel actions involving his/her relative."

On May 11, 2012, IFPTE filed a grievance challenging the grievant's transfer and change of title. The grievant sought a remedy of back pay and to be returned to her prior position. On May 16, the Authority denied the grievance. On June 28, IFPTE demanded binding arbitration. 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 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].

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Authority asserts that it transferred the grievant because she was in a "reporting relationship" with her husband. It argues that its anti-nepotism policy forbids such reporting relationships between relatives. The Authority contends that the application of an anti-nepotism policy is a non-arbitrable exercise of management prerogative.

IFPTE asserts that the grievant is not prohibited from working as a Toll Plaza Supervisor because her husband did not exercise authority over her with regards to personnel actions. IFPTE similarly argues that the grievant was not in a "reporting relationship" with her husband and therefore the Authority's anti-nepotism policy is inapplicable.

A job transfer intimately and directly affects the work and welfare of employees, and there is no statute or regulation which is alleged to preempt this matter. Therefore, the question before us is whether the Authority's decision to transfer the grievant stems from its managerial prerogative to determine governmental policy. Ridgefield Park. We have often restrained arbitration over the substantive decision to transfer employees. Ridgefield Park; Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985); Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982). In this case, the decision to transfer the grievant was made because she was employed as a Toll Plaza Supervisor in the same department as her husband, who is employed as the Toll Director. While the grievant certified that her husband does not "directly" supervise her and there are two levels between her and him, the Authority deemed it best that she no longer work in the same department as her husband. In this era of increased awareness of ethical considerations and higher expectations of transparency and oversight, we find that the

decision to transfer the grievant stems from the Authority's managerial prerogative to determine its anti-nepotism policy and to avoid the appearance of impropriety. The grievant has cited no particularized circumstances warranting a finding that her compensation claim is severable.

ORDER

The request of the New Jersey Turnpike Authority for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Voos abstained from consideration. Commissioner Bonanni was not present.

ISSUED: October 31, 2013

Trenton, New Jersey