

P.E.R.C. NO. 2014-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2013-064

SEIU LOCAL 617,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Newark for a restraint of binding arbitration of a grievance filed by SEIU Local 617. The grievance asserts that the City violated wage provisions of the parties' agreement when it failed to provide backpay to four employees who were reinstated after being improperly laid off. The Commission holds that compensation is mandatorily negotiable, and that Civil Service regulations cited by the City do not expressly, specifically, or comprehensively preempt the award of backpay for the time they were laid off.

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, Meredith A. Accoo, Assistant
Corporation Counsel

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Arnold S. Cohen, of counsel)

DECISION

On April 8, 2013, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by SEIU Local 617.^{1/} The grievance asserts that the City violated wage and hour provisions of the parties' collective negotiations agreement (CNA) when it failed to provide backpay to four employees who were reinstated after being improperly laid off.

The City filed a brief, exhibits, and the certification of Elvin Padilla, a Labor Relations Specialist for the City's

^{1/} Arbitration hearings were held on March 7 and 20, 2013. The arbitration award was issued on April 19, 2013.

Department of Personnel. The SEIU filed a brief. These facts appear.

The SEIU represents all regularly employed, non-supervisory blue collar employees of the City of Newark. The City and SEIU are parties to a CNA with a term of January 1, 2008 through December 31, 2011. The grievance procedure ends in binding arbitration.

Article IX of the CNA, entitled "Work Week", states in Section 1:

The normal work week for employees covered by the Agreement, except as noted below shall consist of forty (40) hours per week, eight (8) hours per day, five (5) consecutive days per week, and each employee shall have two (2) consecutive days off.

On August 24, 2010, the City submitted a Proposed Layoff Plan for its Department of Neighborhood and Recreational Services to the New Jersey Civil Service Commission (CSC) which included the four grievants, all employed in the title of Laborer. The City laid off the grievants on December 23, 2010.

On April 5, 2012, the CSC issued a final administrative action finding that other employees should have been laid off instead of the grievants on December 23, 2010. On April 30, 2012, the grievants were reinstated by the City. On August 31, 2012, the SEIU filed a grievance seeking backpay for the period from the grievants' layoff until their reinstatement. On October 3, 2012, the SEIU requested an arbitration hearing.

Arbitration hearings were held on March 7 and 20, 2013. The issue to be determined was: "Did the Employer violate the Agreement by not awarding back pay to the Grievants after their reinstatement, for the period of December 23, 2010 to April 30, 2012 and if so, what shall be the remedy?" On April 19, 2013, the arbitrator issued his decision sustaining the grievance and ordering the City to compensate the grievants for their back pay and benefits for the period of their layoff, minus unemployment compensation and interim earnings. The arbitrator reasoned that the CSC found the layoffs improper, and that the City violated the grievants' rights under Articles IX and X of the CNA by wrongfully allowing junior employees to work in their place from December 23, 2010 until April 30, 2012.

The City asserts that layoffs pursuant to N.J.S.A. 11A:8-1 and N.J.A.C. 4A:8-1.1 are under the exclusive authority of the CSC and the grievants are not entitled to any remedy for the period of time in which they were laid off.

Our jurisdiction does not include reviewing the merits of a grievance or an arbitration award. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). In a post-arbitration award setting, we decide only whether the arbitration award involved a subject that is legally arbitrable.

We recently decided a nearly identical issue in a case involving the same parties but different grievants who were also

improperly laid off on December 23, 2010 and later reinstated. City of Newark, P.E.R.C. No. 2013-77, 39 NJPER 493 (¶156 2013). The City did not appeal that decision. As in Newark, the limited issue as framed by the arbitrator is whether the grievants are entitled to backpay pursuant to the parties' agreement for the time they were laid off. The CSC statutes and regulations cited by the City do not expressly, specifically and comprehensively preempt the issue in this case. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). It is well settled that absent preemption, compensation is a mandatorily negotiable term and condition of employment. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 7 (1973). Consistent with the limits of our scope of negotiations jurisdiction, we express no opinion on the merits of the arbitrator's award.

ORDER

The arbitration award is within the scope of negotiations. The request of the City of Newark for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: December 19, 2013

Trenton, New Jersey