

P.E.R.C. NO. 2015-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAPE MAY COUNTY MUNICIPAL
UTILITIES AUTHORITY,

Petitioner,

-and-

Docket No. SN-2014-064

TEAMSTERS LOCAL 331,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Cape May County Municipal Utilities Authority for a restraint of binding arbitration of a grievance filed by the Teamsters Local 331. The grievance asserts that the Authority violated the parties' collective negotiations agreement when it denied a unit member's application for a lateral transfer to a Utility Worker position at the Cape May Regional Wastewater Treatment Plant. The Commission finds that the Authority has demonstrated that governmental policies related to training and staffing would be substantially impaired if it granted the grievant's transfer request solely based on seniority.

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, Wade, Long, Wood & Kennedy, LLC,
attorneys (John D. Wade, of counsel)

For the Respondent, Willig, Williams & Davidson,
attorneys (Laurence M. Goodman, of counsel)

DECISION

On February 25, 2014, the Cape May County Municipal Utilities Authority filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 331. The grievance asserts that the Authority violated the parties' collective negotiations agreement (CNA) when it denied a unit member's application for a lateral transfer to the position of Utility Worker at the Cape May Regional Wastewater Treatment Plant.

The Authority has filed briefs, exhibits, and the certification of its Executive Director. Local 331 has filed a brief and exhibit. These facts appear.

Local 331 represents a unit of operations, maintenance, and craft workers employed by the Authority. The Authority and Local 331 are parties to a CNA effective from January 1, 2013 through December 31, 2016. The grievance procedure ends in binding arbitration.

Article 10 of the CNA is entitled "Posting and Announcements." Article 10, paragraph D. provides:

It is agreed that eligible employees who meet the minimum qualifications of the position and apply for a promotion or transfer in the bargaining unit will be given priority over non-employees. To be given consideration for a lateral transfer, an employee must be in their current position and at their current facility for a period of at least three (3) months.

On September 26, 2013, the Authority's Human Resources Director issued a memorandum to employees regarding a promotional and/or transfer opportunity for the position of "Utility Worker - Cape May Region."

The Authority's Executive Director certifies that the Grievant is an experienced Utility Worker for the Authority who works at the Wildwood/Lower Regional Wastewater Treatment Plant. The Grievant applied for the posted position which would have been a lateral transfer from the Wildwood/Lower Regional Wastewater Treatment Plant to the Cape May Regional Wastewater Treatment Plant. The Authority's Executive Director further certifies that the Wildwood/Lower Regional Wastewater Treatment

Plant the Grievant works at is a "Class 4 Facility" and is the Authority's largest, most complex wastewater treatment plant and that the Cape May Regional Wastewater Treatment Plant to which the Grievant applied for transfer is a "Class 2 Facility" that is the Authority's smallest and least complex wastewater treatment plant. The Grievant's transfer application was denied. The Executive Director further certifies that in 2013, the Authority initiated a rotational program where it intended to cross-train new hires in a variety of skill sets, designed to afford the Authority more flexibility in staffing its multiple facilities.

After the Grievant's application for the transfer position was denied, Local 331 filed a grievance on his behalf asserting that the Authority violated Article 10, Section D. of the CNA by denying the transfer. The Authority's Step 1 response denying the grievance stated, in pertinent part:

The Grievant's] qualifications as a Utility Worker are not in question nor are his seniority with the Authority/CMCMUA's operations and maintenance activities.

The Authority attempts to accommodate employee requests for lateral transfers when it is in the Authority's best interests. As [the Grievant] has been informed, the Authority's current concerns revolve around keeping its experienced personnel at its higher rated facilities in order to ensure adequate treatment at these larger complex facilities.

It should also be noted that no other experienced Utility Workers were selected for this vacant position at the Cape May Regional

Wastewater Treatment Facility over [the Grievant]. It is the Authority's intent to fill this position with a newly hired entry level Utility Worker, who will be qualified for the position but will not remove any experienced Authority Utility Workers from their current assignments and therefore strain the resources at any of the existing facilities.

The Authority's November 25, 2013 Step 2 response denying the grievance following a grievance hearing stated, in pertinent part:

The Authority posted the vacancy in Cape May because we have historically always posted all vacancies and did not want to break from past practice. In this particular circumstance, Mr. Lauletta, Wastewater Program Manager did not feel that it was in the Authority's best interest to remove an experienced Utility Worker from our largest and most complex wastewater treatment facility and reassign him at the same position and salary, to our smallest and least complex wastewater treatment plant. Had this lateral transfer been made, a newly hired, inexperienced Utility Worker would have then been assigned to the largest facility. In addition, subsequent to the posting, Mr. Lauletta realized there were an unprecedented four (4) vacancies at the Utility Worker level in the Wastewater Program that had to be filled, and one very recently hired new Utility Worker at the Composting Facility. Mr. Lauletta believed that a rotation program for the five (5) new employees would benefit the new hires from an experience standpoint and would ultimately benefit the Authority. Each new employee would spend four (4) months at each of the five (5) wastewater facilities that currently had a vacancy (one of which was the opening of the Cape May Facility) for a total of 20 months. Transferring [the Grievant] to the Cape May Facility would have removed that

vacancy from the Cape May Region and created two (2) Utility Worker vacancies at the Wildwood/Lower Plant. The workload and level of expertise and experience needed at the Wildwood facility would functionally preclude the continuous training of two (2) new employees at a time for a 20-month period. It should be noted that a new employee requires several months of training, particularly at the larger plants, to be able to fully perform in a safe manner all the duties required of the position.

On January 6, 2014, Local 331 demanded binding arbitration. This petition ensued.

The Commission's inquiry on a scope of negotiations petition is quite narrow. The Commission is addressing a single issue in the abstract: whether the subject matter in dispute is within the scope of collective negotiations. The merits of the union's claimed violation of the agreement, as well as the employer's contractual defenses, are not in issue, because those are matters for the arbitrator to decide if the Commission determines that the question is one that may be arbitrated. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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]

The Authority asserts that the grievance does not concern an issue that directly affects the work and welfare of the Grievant because his transfer application simply involves the location where he works, and not rate of pay or hours of work. The Authority argues that a negotiated agreement on this issue would significantly interfere with the determination of government policy because the Authority cannot be mandated to accommodate a transfer request of an experienced unit member from its largest, most complex facility to its smallest, least complex facility. It contends that granting transfer requests based on seniority would interfere with its governmental policy goal of cross-training new hires to ensure that the Authority has more flexibility in staffing its multiple facilities.

Local 331 asserts that the Authority has conceded that the Grievant is at least minimally qualified for the position as required by Article 10.D. of the CNA, because it denied his transfer with the intention of filling the vacancy with a new hire. Local 331 argues that granting a transfer request based on

seniority among qualified candidates does not greatly interfere with the Authority's management of its facilities, because it had the ability to determine the qualifications of the position and determine whether the Grievant satisfies them. It contends that under these circumstances, seniority is at best a tie-breaker between two qualified candidates. Local 331 asserts that having decided the Grievant is qualified, the Authority should not be permitted to rely on its ill-defined governmental policy of cross-training new hires in order to avoid the contractual commitments of Article 10.D.

The Authority replies that its implementation of a rotational program through which it intends to cross-train new hires serves a valid managerial purpose of creating more staffing flexibility, and the CNA's transfer clause significantly interferes with such governmental policy.

Generally, grievances asserting that seniority should govern transfers or shift assignments are legally arbitrable. However, an exception exists where issues of special qualifications are present or where the employer has shown that a governmental policy would be substantially impeded. City of Trenton, P.E.R.C. No. 2014-18, 40 NJPER 202 (¶77 2013). Here, when the Authority's Executive Director's certification is read in conjunction with its grievance responses, we find that the Authority has adequately demonstrated that governmental policies would be

substantially impaired if it made the transfer request based on seniority. The governmental policies articulated by the Authority are two fold. First, the Authority determined that it was in its best interest to keep its experienced personnel, like the Grievant, at its higher-rated facility in order to insure adequate treatment since it is a larger, more complex facility. It noted that no other experienced personnel were selected for the position and that it intended to fill the position with a newly hired, entry-level worker. Second, subsequent to the posting of the position, it decided to implement a rotational program for several vacant positions, inclusive of the posted position that Grievant applied for. The purpose of the rotational program would be to cross-train new hires to create staffing flexibility in the facilities and if an experienced employee was placed in the posted vacant position it would have interfered with the ability to cross-train new employees. Given that the Authority has adequately demonstrated the governmental policies that would be impaired if it made the transfer request based on seniority, we restrain arbitration. Town of Phillipsburg, P.E.R.C. No. 89-30, 14 NJPER 640 (¶19268 1988).

ORDER

The request of the Cape May County Municipal Utilities Authority for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: October 30, 2014

Trenton, New Jersey