

P.E.R.C. NO. 2016-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,  
STOCKTON STATE COLLEGE,

Petitioner,

-and-

Docket No. SN-2015-019

COUNCIL OF NEW JERSEY STATE  
COLLEGE LOCALS, AFT, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the State of New Jersey, Stockton State College's request for a restraint of binding arbitration of a grievance filed by the Council of New Jersey State College Locals, AFT, AFL-CIO. The grievance contests the refusal to place the men's head lacrosse coach into a bargaining unit title. The Commission finds that whether the contractual recognition clause covers the job the Grievant is performing is mandatorily negotiable, but restrains arbitration to the extent the grievance challenges the College's managerial prerogative to create non-unit temporary or part-time seasonal lacrosse coaches.

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, John J. Hoffman, Acting Attorney  
General (Adam Verone, Deputy Attorney General, on the  
brief)

For the Respondent, Debra Lee Davis, Staff  
Representative

DECISION

On September 18, 2014, the State of New Jersey, Stockton State College (College), filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Council of New Jersey State College Locals, AFT, AFL-CIO (Council). The grievance asserts that the College violated the parties' collective negotiations agreement (CNA) by refusing to place the men's Head Lacrosse Coach in the bargaining unit, thereby not providing him with the compensation or other benefits provided by the CNA. We restrain arbitration in part, and deny restraint of arbitration in part.

The College has filed briefs and exhibits. The Council has filed a brief and exhibits. Neither party filed a certification.<sup>1/</sup> These facts appear.

The Council represents a negotiations unit of regular teaching and/or research faculty, administrative staff, librarians, and other professional and teaching staff employed by the University and the State's other State Colleges and Universities. The University and Council are parties to a collective negotiations agreement with a term of July 1, 2011 through June 30, 2015. The grievance procedure ends in binding arbitration for grievances alleging a violation of the CNA.

Article I, Section A. of the CNA enumerates ten specific job categories included in the unit, including the following descriptions:

**Article I**  
**RECOGNITION AND DEFINITION OF TERMS**

A. ...

Included:

...

3. Administrative staff (non-managerial)

...

9. Part-time personnel employed in categories 1-8 above who (a) are employed in regular, recurrent positions, (b) work at least half of a full load, and (c) are employed on either a one-year contract or on at least a half-year

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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.

contract occurring during any two consecutive academic years.

The Grievant has been employed by the College as its men's Head Lacrosse Coach since September 9, 2009. The annual reappointment letters through June 30, 2014 describe the Head Lacrosse Coach position as a "temporary, part-time position on the staff of The Richard Stockton College of New Jersey."<sup>2/</sup>

On June 24, 2013, the Council filed a Grievance asserting that the College violated Article I, Section A. of the CNA by refusing to place the Grievant in the bargaining unit in the category of administrative staff (managerial) (full-time or part-time). The grievance asserts that, contrary to the appointment letters which categorized the Head Lacrosse Coach position as "temporary, part-time," the Grievant has been regularly performing as a lacrosse coach since 2009. As a remedy, the Council seeks for the Grievant to be placed in the bargaining unit in a full-time professional staff title appropriate for a Head Coach with appropriate salary placement and enjoyment of the CNA's other benefits and terms and conditions of employment.

The College's Step 1 Grievance Hearing Officer denied the grievance, finding that the Grievant does not belong in the unit

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<sup>2/</sup> The Grievant's June 16, 2014 reappointment letter for July 1, 2014 to June 30, 2015, made after the grievance underlying this petition was filed, specified that "As this is a temporary position your hours cannot exceed 944 hours in a calendar year with a maximum of 25 hours per week."

because the Council failed to establish that he worked even a half-time load, and that he has been appointed and reappointed in a valid temporary, seasonal Civil Service title limited to 944 annual hours and unaligned with the bargaining unit. The Council demanded binding arbitration. This petition ensued.

The Commission's inquiry on a scope of negotiations petition is quite narrow. We are 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 College asserts that the grievance challenges its managerial prerogative to create positions and make hiring decisions and is therefore not arbitrable. It argues that its decision to hire and retain the Grievant in a temporary, seasonal service title is based on the operational needs of the College and to negotiate over whether to place him into a full-time coach position in the bargaining unit would impermissibly infringe on its educational policy determinations.<sup>3/</sup>

The Association asserts that the grievance does not seek to arbitrate a substantive hiring decision or force the College to create a new position, but only seeks to arbitrate whether the Grievant is actually performing the work of a position covered by the CNA's recognition clause.<sup>4/</sup> It argues that it does not dispute the College's decision to annually rehire the Grievant

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<sup>3/</sup> Among other cases, the College cites: UMDNJ, 223 N.J. Super. 323, 334 (App. Div. 1988); Rutgers, P.E.R.C. No. 2000-83, 26 NJPER 209 (¶31086 2000); Rutgers, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991); and Rahway Valley Sewerage Auth., P.E.R.C. No. 89-37, 14 NJPER 654 (¶19275 1988).

<sup>4/</sup> Among other cases, the Council cites: Bloomfield Tp. Bd. of Ed., P.E.R.C. No. 2015-4, 41 NJPER 93 (¶31 2014); Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 88-110, 14 NJPER 342 (¶19130 1988); and Somerset Cty. College, P.E.R.C. No. 86-48, 11 NJPER 690 (¶16238 1985).

and is not seeking to create a new title, position, eligibility criteria, or jobs and duties of a Head Coach, but only challenges the College's claim that the men's Head Lacrosse Coach is a non-unit position not entitled to the benefits of the CNA.

This dispute centers on whether the Grievant's position has been properly classified as being outside of the negotiations unit. The Commission has consistently held that an arbitrator may interpret a contractual recognition clause and determine whether an employee is actually performing work of a title covered by the agreement. See Bloomfield Tp. Bd. of Ed., *supra* (whether office aide position is in unit was arbitrable); Mount Olive Bd. of Ed., P.E.R.C. No. 2013-71, 39 NJPER 474 (¶150 2013) (whether substitute teachers are in unit was arbitrable); County of Hudson, P.E.R.C. No. 2010-47, 35 NJPER 472 (¶157 2009) (whether police academy trainees are in unit was arbitrable); City of Hoboken, P.E.R.C. No. 2010-40, 35 NJPER 445 (¶146 2009) (whether CFO is in unit was arbitrable); Sussex Cty. Voc. School Bd. of Ed., P.E.R.C. No. 2005-17, 30 NJPER 407 (¶132 2004) (whether nurse is in unit was arbitrable); Spring Lake Borough, P.E.R.C. No. 2003-38, 28 NJPER 579 (¶33180 2002) (whether police captain is in unit was arbitrable); City of Hoboken, P.E.R.C. No. 96-16, 21 NJPER 348 (¶26214 1995) *aff'd* 23 NJPER 140 (¶28068 App. Div. 1996); Moonachie Bd. of Ed., P.E.R.C. No. 97-13, 22 NJPER 324 (¶27164 1996) (whether librarian is in unit was

arbitrable); City of Brigantine, P.E.R.C. No. 95-8, 20 NJPER 326 (¶25168 1994) (whether employee's promotion to non-unit title of administrative assistant was functionally the same as her prior unit position was arbitrable); Caldwell-West Caldwell Bd. of Ed., supra; and Somerset Cty. College, supra (whether employee is actually performing the work of unit lab assistant title was arbitrable). We therefore decline to restrain arbitration of the Council's claim that the Grievant is performing unit work and is still within the Association's unit according to the parties' contractual recognition clause. An arbitrator may determine if the Grievant is included in the unit and, if so, which negotiated compensation and benefits apply and at what level.

However, as in Mount Olive, Moonachie, Brigantine, and Somerset Cty. College, we restrain arbitration to the extent that the Council's grievance claims might compromise the College's managerial prerogative to create a non-unit temporary or part-time seasonal lacrosse coach position if it chooses, and to determine the duties of that position and whom to hire for it, as well as its prerogative to abolish or leave vacant a regular lacrosse coach position covered by the recognition clause.

The Council has raised arguments and supplied documentation indicating that other state college lacrosse coaches have been classified in unit positions, while the College has raised arguments and provided documentation to bolster its claim that



the Grievant has not been performing the same full-time head coach duties or worked enough hours to warrant the same classification as other head coaches who fall within the unit's recognition clause. Consideration of such evidence and arguments are appropriate for an arbitrator; we repeat that we do not consider the merits of the underlying grievance claim.

Ridgefield Park.

ORDER

The request of the State of New Jersey, Stockton State College for a restraint of binding arbitration is:

A. Granted to the extent the grievance challenges the College's hiring decisions or its power to create, leave vacant, or abolish positions;

B. Denied to the extent the grievance alleges that the Grievant's men's Head Lacrosse Coach position is covered by the parties' agreement.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against Part A of the Order and voted in favor of Part B of the Order.

ISSUED: August 13, 2015

Trenton, New Jersey