

P.E.R.C. NO. 97-136

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Respondent,

-and-

Docket No. CO-H-96-8

COMMUNICATIONS WORKERS OF AMERICA,

Charging Party.

STATE OF NEW JERSEY
(DEPARTMENT OF HUMAN SERVICES),

Petitioner,

-and-

Docket No. SN-97-11

COMMUNICATIONS WORKERS OF AMERICA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission reaffirms its rulings after granting the State of New Jersey's request for reconsideration of P.E.R.C. No. 97-106. In that case the Commission declined to restrain arbitration over a grievance alleging a practice of automatically advancing a teacher 2 to the higher title and pay grade of a teacher 1 after three years of satisfactory service. The Commission also deferred to arbitration a related allegation in an unfair practice charge. The State requested reconsideration, asserting that the Commission's rulings are inconsistent with a recent Appellate Division decision. After consideration of whether that decision warranted changing its previous rulings, the Commission reaffirms its earlier rulings.

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 Respondent, Peter Verniero, Attorney General
(Mary Cupo-Cruz, Senior Deputy Attorney General)

For the Charging Party, Weissman & Mintz, attorneys
(Judianne Chartier, of counsel)

DECISION AND ORDER

In State of New Jersey (Dept. of Human Services) and CWA,
P.E.R.C. No. 97-106, 23 NJPER 194 (128096 1997), we declined to
restrain arbitration over a grievance alleging a practice of
automatically advancing a teacher 2 to the higher title and pay
grade of a teacher 1 after three years of satisfactory service.

We also deferred to arbitration a related allegation in an unfair practice charge.

On March 17, 1997, the employer asked us to reconsider these rulings, asserting that they are inconsistent with the decision on March 5, 1997 in State v. Walsh, 147 N.J. 595 (1997), rev'g 290 N.J. Super. 1 (App. Div. 1996). On April 25, after receiving an agreed-upon extension of time, CWA opposed reconsideration.

We grant reconsideration to determine whether Walsh warrants changing these rulings. We hold it does not.

In Walsh, an assistant deputy public defender ("ADPD") claimed that his employer had breached a contractual obligation to promote him from ADPD II to ADPD I after only one year of service. An Appellate Division majority upheld this claim, but Judge Skillman dissented. The Supreme Court reversed the judgment, substantially for the reasons expressed in Judge Skillman's dissenting opinion. We will thus focus on that opinion.

Judge Skillman concluded that the Public Defender lacked statutory authority to make an enforceable agreement to promote an ADPD. He cited three grounds. First, the Legislature had specified that ADPDs "serve at the pleasure of the Public Defender" and thus the Public Defender had unfettered discretion to withhold a promotion. Second, N.J.A.C. 4A:4-1.10 authorizes the Department of Personnel ("DOP") to review and approve any proposed promotion of an ADPD and Walsh's promotion would not have

been approved because he did not meet the eligibility requirement, set forth in the Civil Service job specification for ADPD I, of two years of service in the ADPD II title. Third, the legislatively-established Salary Adjustment Committee had frozen all promotions except upon a showing of "extraordinary justification and compelling need."

The employer does not argue that the first and third grounds apply. It contends only that Walsh's second ground -- DOP's authority to review and approve promotions under N.J.A.C. 4A:4-1.10 -- warrants restraining arbitration of CWA's claim (denied by the employer) that there is a practice of automatically advancing a teacher 2 to the higher title and pay grade of a teacher 1 after three years of satisfactory service. We will summarize the analysis in P.E.R.C. No. 97-106 of the negotiability of that claim before we consider whether Walsh requires modifying that analysis.

We held that CWA's claim presented a negotiable compensation issue rather than a non-negotiable promotion issue given the critical fact (absent in Walsh) that the duties, knowledge and abilities set forth in the job specifications for the two unclassified titles were the same. 23 NJPER at 197-198. We then considered whether Civil Service statutes or regulations preempted arbitration and we held that they did not. 23 NJPER at 198-199. We recognized that N.J.A.C. 4A:4-1.10 required DOP to review and approve all promotions, including promotions of

unclassified employees, and that DOP could thus reject a promotion if an employee did not meet the eligibility requirements of the Civil Service job specification for the higher title. But we also stated that N.J.A.C. 4A:4-1.10 did not appear to empower DOP, once it was satisfied that its eligibility requirements had been met, to invalidate promotions otherwise within the employer's discretion.


Judge Skillman concluded that the alleged contractual agreement in Walsh would have displaced DOP's power under N.J.A.C. 4A:4-1.10 to review promotions of unclassified employees; in fact, as Judge Skillman noted, Walsh did not meet DOP's eligibility requirements. Our decision is consistent with this holding and does not displace DOP's authority to review and approve title and pay grade advancements. We repeat: no advancements from teacher 2 to teacher 1 may be made without affording DOP the opportunity to exercise its regulatory authority. Nothing in Walsh, however, precludes an employer from agreeing to seek DOP's approval of advancements otherwise within the employer's discretion if the eligibility requirements have been met.^{1/} We accordingly reaffirm our rulings concerning the arbitrability and deferral to arbitration of CWA's claim.

^{1/} If DOP does have the power to invalidate promotions of unclassified employees for reasons beyond failure to meet eligibility requirements, it may exercise that power when and if a particular request for advancement is made, as required by N.J.A.C. 4A:4-10 and our decision.

ORDER

Reconsideration is granted. The order denying a restraint of binding arbitration of the grievance concerning Pamela Umbrello and Arlene Shaplow and the order deferring to arbitration the related allegation in paragraph 3a of the Complaint are reaffirmed.

BY ORDER OF THE COMMISSION



O.F. Wenzler
Acting Chair

Acting Chair Wenzler, Commissioners Boose, Buchanan, Finn, and Ricci voted in favor of this decision. None opposed. Chair Wasell abstained from consideration. Commissioner Klagholz was not present.

DATED: May 29, 1997
Trenton, New Jersey
ISSUED: May 30, 1997