

P.E.R.C. NO. 2001-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC VALLEY WATER COMMISSION,

Petitioner,

-and-

Docket No. SN-2000-105

TEAMSTERS LOCAL 97 OF NEW JERSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Passaic Valley Water Commission for a restraint of binding arbitration of a grievance filed by Teamsters Local 97 of New Jersey. The grievance seeks compensation for an employee for having performed the duties of a supervisory position, while the permanent holder of the higher-paying job was absent. The Commission concludes that this grievance involves a claim for compensation while performing the duties of a higher position which is mandatorily negotiable and may be submitted to binding arbitration.

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, Pashman Stein, P.C., attorneys
(Samuel S. Samaro, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, P.C., attorneys
(James M. Mets, on the brief)

DECISION

On May 30, 2000, the Passaic Valley Water Commission petitioned for a scope of negotiations determination. The PVWC seeks a restraint of binding arbitration of a grievance filed by Teamsters Local 97 of New Jersey. The grievance seeks compensation for an employee for having performed the duties of a supervisory position while the permanent holder of the higher-paying job was absent.

The parties have filed briefs and exhibits. These facts appear.

Local 97 represents blue-collar and white-collar personnel, except supervisors, managerial executives, police and

confidential employees. The PVWC and Local 97 are parties to a collective negotiations agreement effective from January 1, 1996 through December 31, 1998. The grievance procedure ends in binding arbitration. Article VIII, Section 4 provides:

No employee shall perform the duties of a higher classification except during the qualifying period or during emergencies, or to fill in for sickness, vacation or other absence of a higher classified employee. Whenever an employee shall have performed the duties of a higher classification for 20 accumulated working days within a 60 day period (vacation periods excepted), he shall receive the starting rate for the higher classification or the step above his hold rate, whichever is higher, but not to exceed the maximum for the new classification.

Joseph Paese is employed as a Senior Storekeeper. In November and December 1997, Paese asked that the New Jersey Department of Personnel (DOP) reclassify him as a Principal Storekeeper, the next higher title. On January 21, 1998, a DOP Manager denied the request. Paese did not appeal that determination.

On September 14, 1998, Paese filed a grievance. It states:

Under Article VIII, Section #4, I feel that I am entitled to either the starting rate or one increment whichever the greater for performing all the job duties of the supervisor above me during his absence which started 2-9-98.

The grievance was denied at all levels. On January 8, 1999, Local 97 demanded arbitration. This petition ensued.^{1/}

The PVWC asserts that DOP has already rejected Paese's bid for reclassification. It asserts that questions concerning reclassification and title upgrades are matters for DOP and relies on State of New Jersey (Dept. of Community Affairs), D.U.P. No. 2000-11, 26 NJPER 111 (¶31045 2000), where our Director of Unfair Practices concluded that the Commission does not have jurisdiction in an unfair practice case to resolve disputes concerning reclassification and title upgrades.

Local 97 responds that the grievance seeks compensation for a period which began after the DOP ruling on the reclassification request for the grievant's own position. It maintains that compensation for performing the work of a higher classification is negotiable and legally arbitrable.

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

^{1/} On August 1, 2000, the arbitrator sustained the grievance. He found that the employer violated Article VIII, Section 4 by not paying the grievant the higher rate of pay for performing work of a higher classification. He retained jurisdiction should the parties be unable to agree on an appropriate remedy.

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 contractual merits of this grievance or any contractual defenses.

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]

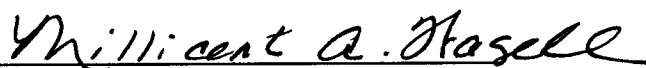
We agree with the PVWC that an arbitrator cannot second-guess DOP's determination that Paese's regular position should not be reclassified. But that is not the issue raised by the grievance. Instead, the grievance asserts that Paese performed the duties of the higher position during his supervisor's absence, an absence which began after the DOP ruling, and seeks compensation for that work. Such compensation claims

are mandatorily negotiable. If proven, an agreement to compensate an employee for work in a higher title would not significantly interfere with the determination of governmental policy. See, e.g., Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 App. Div. 1993); Morris Cty., P.E.R.C. No. 98-83, 24 NJPER 58 (¶29036 1997); City of Hoboken, P.E.R.C. No. 96-7, 21 NJPER 280 (¶26179 1995); City of Garfield, P.E.R.C. No. 94-11, 19 NJPER 442 (¶24205 1993); South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); Edison Tp., P.E.R.C. No. 86-9, 11 NJPER 455 (¶16160 1985); City of Paterson, P.E.R.C. No. 84-113, 10 NJPER 257 (¶15123 1984); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982).

ORDER

The request of the Passaic Valley Water Commission for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

DATED: September 28, 2000
Trenton, New Jersey
ISSUED: September 29, 2000