P.E.R.C. No. 91-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY, DEPARTMENT
OF MILITARY AND VETERANS AFFAIRS
(MENLO PARK SOLDIERS HOME),

Respondent,

-and-

Docket No. CO-H-88-159

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL NO. 1,

SYNOPSIS

The Public Employment Relations Commission grants the State of New Jersey's motion for reconsideration of P.E.R.C. No. 91-40. In that decision, the Commission found that the State of New Jersey, Department of Military and Veteran Affairs (Menlo Park Soldiers Home) violated the Act by abrogating a negotiated local agreement permitting human services technicians and assistants represented by AFSCME, Council No. 1 to have every other weekend off. Reconsideration is granted to clarify the reach of that decision, but the Commission reaffirms its holding of P.E.R.C. No. 91-40 that the employer violated the Act when it abrogated the negotiated local agreement.

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COUNCIL NO. 1,

Charging Party.

Appearances:

For the Respondent, Robert J. Del Tufo, Attorney General
(Richard D. Fornaro, Deputy Attorney General)

For the Charging Party, Szaferman, Lakind, Blumstein,
Watter & Blader, attorneys (Sidney H. Lehmann, of counsel)

DECISION AND ORDER

On November 29, 1990, after an extension of time, the State of New Jersey moved for reconsideration of P.E.R.C. No. 91-40, 16 NJPER 583 (¶21257 1990). In that decision, we found that the State of New Jersey, Department of Military and Veteran Affairs (Menlo Park Soldiers Home) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-et seq., by abrogating a negotiated local agreement permitting human services technicians and assistants represented by AFSCME, Council No. 1 to have every other weekend off.

On December 14, 1990, AFSCME filed a reply opposing reconsideration.

The employer argues that Article 17 of the parties' agreement, entitled "Hours of Work," reserved to it the right to revise the scheduled days off of employees at the Soldiers Home. It reads our decision to hold that the employer had no such reserved authority and that there must be negotiations with AFSCME to effectuate any changes in scheduled days off.

The employer further argues that the plain language of Article 17C demonstrates that local appointing authorities could unilaterally institute changes in days-off schedules if they complied with limited procedural notice protections. It claims that our decision conflicts with State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985), which stated that "there is a settled labor contract principle that, except where specifically restricted by contract, management generally has been held to have the right to change the workweek...." Id. at 726. It urges that we reverse our decision.

The employer also urges that we clarify certain "inconsistencies" and "ambiguities." It believes that the decision should be limited to the unique facts of this dispute and to the conclusion that the local agreement bound only this one local appointing authority.

We grant reconsideration to clarify the reach of our decision. But we reaffirm the holding of P.E.R.C. No. 91-40 that the employer violated the Act when it abrogated the negotiated local agreement.

The local agreement did not conflict with any specific terms of the statewide contract. It granted employees every other weekend off and no provision in the statewide agreement established any other weekend schedule. Assuming that the employer had the right to change days-off, either by contract, practice or reserved right, the local agreement was simply a valid exercise of that discretion.1/

In State of New Jersey, we held that the contract authorized a change in starting and quitting times based on:

> (1) an interpretation of the contract based on the contracting parties' intent; (2) generally accepted principles of labor contract interpretation and (3) CWA's own conduct after it became the majority representative. [11 NJPER at 727]

Our decision does not disturb or conflict with State of New Jersey. Our analysis of the "Hours of Work" provision was limited to inquiring whether it conflicted with and therefore overrode the local scheduling agreement. Absent any conflict, we found that the local appointing authority could have agreed to an every other weekend off schedule. We did not set aside Article 17 or interpret it to require negotiations before changing employees' work schedules. We based our decision on the unique facts of this case and specifically the presence of the local agreement.

1/ We intimate no opinion about how this case might be analyzed if there had not been a written local agreement.

ORDER

Reconsideration is granted and P.E.R.C No. 91-40 is clarified in accordance with this decision.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
December 17, 1990
ISSUED: December 18, 1990