

P.E.R.C. NO. 2018-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SECAUCUS MUNICIPAL UTILITIES AUTHORITY,

Petitioner,

-and-

Docket No. SN-2018-008

TEAMSTERS LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Authority's request for a restraint of binding arbitration of a grievance filed by the Teamsters contesting the procedures followed during a winter storm that resulted in two employees not being called in for overtime. The Commission finds that the Authority's decision not to call in additional employees on the two days in question was an exercise of its non-negotiable managerial prerogative to determine staffing requirements.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Adam S. Abramson-Schneider, of counsel and on the brief; Shannon Boyne, on the brief)

For the Respondent, Kroll Heineman Carton, LLC, attorneys (Amy E. Spekhardt, on the brief)

DECISION

On August 15, 2017, the Secaucus Municipal Utilities Authority (Authority) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 11 (Teamsters). The grievance asserts that the Authority did not follow "Storm Procedures," a set of procedures to be followed during certain weather conditions, on March 31 and April 1, 2017, resulting in two employees not being called in for eight hours of overtime each.

The Authority filed briefs, exhibits and the certifications of Brian Beckmeyer, the Authority's Superintendent, and Brian Bigler, the Authority's Executive Director. Teamsters filed a

brief and the certification of John Baer, one of two Authority employees whom Teamsters alleges should have worked overtime. These facts appear.

The Authority and the Teamsters are parties to a collective negotiations agreement in effect from January 1, 2016 through December 31, 2020. The grievance procedure ends in binding arbitration.

Beckmeyer has been an Authority employee for thirty years, and has served as Superintendent since 2003. As Superintendent, he is one of the employees responsible for determining the need for overtime and the necessity of an additional employee for the safe operation of the Authority. He certifies that at 3 p.m. on March 31, 2017, he instructed staff to enter into Storm Procedures because the influent flow had reached the top of the plant influent pipe. Storm Procedures do not include a minimum staffing level. Beckmeyer certifies that after viewing the readings of the influent pipe, he determined there was no need to call in an additional employee and that at 8:15 p.m., he contacted the Operator who advised that conditions were stable. He further certifies that while in Storm Procedures throughout the afternoon and evening of Friday, March 31, 2017 through the morning of Saturday April 1, 2017, he did not believe it was necessary to call in an additional employee because the flow remained stable. Moreover, Storm Procedures require that if

there is an issue that needs management's attention, Beckmeyer is the first management representative to be notified. Beckmeyer certifies that on March 31 he did not receive a call from any employee that an additional employee was needed to assist on site.

An April 4 memo from Beckmeyer to Bigler states as follows:

At approximately 3 p.m. on Friday 3/31/17 I instructed staff to enter into storm procedures as the Influent flow had reached the top of the bell of the Plant Influent pipe as per the revised Storm Procedures of 2016. The Influent flow was recorded at 5.2 M.G.D. at 4 p.m. when I left the Plant. The Influent Flow was well below the concrete walkway in the Grit Building (approximately 3-4 feet below) therefore there was no need to turn on the Interim Pumps and call in another Employee.

The flow at 5 p.m. was 5.3 M.G.D., at 7 p.m. flow was not recorded by the operator, at 8 p.m. the flow was 6.9 M.G.D., at 10 p.m. the flow was 5.6 M.G.D. On 4/1/17 the flow was 6.9 M.G.D. at 1 a.m., 7.0 M.G.D. at 2 a.m., 6.1 M.G.D. at 4 a.m. Additional flow data is on file if necessary.

At 5:07 p.m. I received a call from Luke Smentkowski that the Interim Pumps were activated and the discharge pipes were failing. He stated that the second interim pump tripped out and could not be reset. I returned to the Treatment Plant at approximately 5:45 p.m. and the level of the Influent Pump at the Grit Building was at least 3 feet below the concrete grating. When I was at the Plant I noticed that the second employee was in the Laboratory. At this point I deemed it not necessary to call in another employee. The flow was stable and one employee was in the Laboratory.

At 6:15 p.m. I called Luke and explained I would be unavailable for the next hour or two for personal reasons and told him if he believed he needed another employee to call someone in to work. Also if any alarms were received from the Pump Station to call someone into work.

I called Luke back again at 8:15 p.m. and asked him the status at the Plant. He explained that the flow was stable using one Interim pump. I asked if anyone was called into work and he said no. That was the last time I spoke to Luke Smentowski for the evening.

At 1:05 a.m. Mr. Joseph Marchese received an alarm from the Turnpike Pump Station (P.S. 2). When he got the alarm Mr. Anthony Smentowski was called into work to check the pump station. He went to the Pump Station and remedied the situation. If there was a need for him to go and stay at the Plant he was surely available. That was not the case.

Baer has been employed by the Authority for 12 years and 7 months. Baer certifies that for the past five years, three individuals are scheduled for all shifts, and that various members of the Authority's management have insisted that three individuals are needed to properly facilitate the plant and uphold the necessary safety standards. He further certifies that on March 31, 2017 three individuals were scheduled to work the 4 p.m. to 12 a.m. shift and the 12 a.m. to 8 a.m. shift on April 1. However, one employee was unavailable to report to work for the 4 p.m. to 12 a.m. shift, and no other individual was called to replace him. Two employees were unavailable to report to the 12 a.m. to 8 a.m. shift on April 1, and only one employee was called

in to replace them. Baer further attests that based on his past experience and the Authority's policy, three employees should be working when Storm Procedures are activated because a third individual is responsible for monitoring the pumps at Station 1, and if a third individual is not present, one of the other two individuals is left to leave their positions at the Control Room or Bell in order to address any issues the pumps may be having. He further certifies that individuals who replace regularly scheduled workers are scheduled according to the stand-by seniority system, and accordingly, he should have been the first employee to be called in for the 4 p.m. to 12 a.m. shift on March 31, and Joseph Prestimonico was the next to be called in for the 12 a.m. to 8 a.m. shift on April 1.

The Authority asserts that it has a managerial prerogative to determine minimum manning levels. The Teamsters acknowledges that managerial prerogative, but asserts that there was a past practice to have three employees working during Storm Procedures and that there was an impact on employee workload and safety due to not having three employees working during Storm Procedures on March 31 and April 1, 2017.

It is well settled, and not in dispute in the within matter, that a public employer has a managerial prerogative to determine its staffing levels. City of Vineland, P.E.R.C. No. 2013-43, 39 NJPER 250 (¶86 2012); see also Township of Fairfield, P.E.R.C.

No. 2014-73, 40 NJPER 514 (¶166 2014). Therefore, the Authority had the managerial prerogative to determine that it was sufficiently staffed on March 31 and April 1, 2017 during Storm Procedures. The parties are in disagreement as to whether there was a past practice of three employees working during Storm Procedures. However, even assuming that such a past practice existed, it would not be enforceable given the Authority's managerial prerogative to determine staffing levels. In other words, a valid past practice cannot flow from an issue that is a managerial prerogative and in conflict with that prerogative. Atlantic Cty. Sheriff's Office, P.E.R.C. No. 2017-36, 43 NJPER 243 (¶75 2016) (finding "that an alleged past practice cannot transform a non-negotiable managerial prerogative into a negotiable issue").

Teamsters also asserts that due to the Authority not scheduling three employees during Storm Procedures on March 31 and April 1, 2017, there was an impact on employee workload and safety. However, the Teamsters has not supported this argument with a certification from employees who were actually working during Storm Procedures on those dates. Moreover, the documentation in the record reflecting what transpired on those dates does not reflect any safety concerns. The April 4, 2017 memo from Beckmeyer to Bigler reflects that the employee working during Storm Procedures was given the option of calling in

another employee if necessary, and that he chose not to exercise that option.

ORDER

The Secaucus Municipal Utilities Authority's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself. Commissioner Jones was not present.

ISSUED: December 21, 2017

Trenton, New Jersey