

P.E.R.C. NO. 91-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAPE MAY COUNTY
BRIDGE COMMISSION,

Petitioner,

-and-

Docket No. SN-91-11

IFPTE LOCAL 196,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that contract language which IFPTE Local 196 seeks to include in a successor collective negotiations agreement with the Cape May County Bridge Commission predominantly relates to minimum staffing, not work year, and is not mandatorily negotiable.

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Appearances:

For the Petitioner, Gruccio, Pepper, Giovinazzi & DeSanto,
attorneys (Lawrence Pepper, Jr., of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(Nancy Iris Oxfeld, of counsel)

DECISION AND ORDER

On August 3, 1990, the Cape May County Bridge Commission petitioned for a scope of negotiations determination. The Bridge Commission contends that language which IFPTE Local 196 seeks to include in a successor collective negotiations agreement is not mandatorily negotiable.

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

The Bridge Commission operates and maintains toll bridges in Cape May County. Local 196 represents a unit of all Bridge Commission employees excluding executive staff. During negotiations for a contract to succeed the one in effect from May 1, 1987 to April 30, 1990, the Bridge Commission asserted that Article 11,

Section 4 entitled "Layoff" was not mandatorily negotiable and should not be included in a successor agreement. That section reads:

It is understood and agreed that the Commission will have only two (2) full-time maintenance men during the period from October 1 to May 1.

The parties completed negotiations on a contract to cover the period from May 1, 1990 to April 30, 1993, agreeing that the Bridge Commission could challenge the provision's negotiability by filing a scope of negotiations petition.

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 403-404]

The disputed provision requires the Bridge Commission to employ only two full-time maintenance workers during the off-peak season. The Bridge Commission argues that the clause determines the size of its workforce, is a minimum staffing article and is not mandatorily negotiable. Local 196 argues that the provision

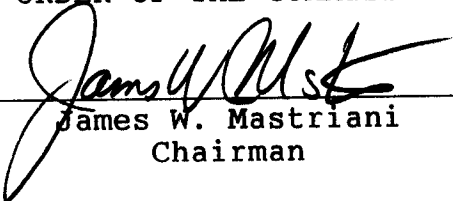
determines the length of the work year because without it, two employees who would otherwise work year-round could have their work year shortened by seven months.

It is well established that whether to have a particular type of employee on duty and the number of such employees needed to provide a service are matters of managerial prerogative. See N.J. Sports & Expo. Auth., P.E.R.C. No. 90-62, 16 NJPER 46 (¶21022 1989); Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (¶19123 1988); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983). While the length of the workyear is mandatorily negotiable, see Piscataway Tp. Bd. of Ed. v. Piscataway Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978), this proposal predominantly relates to minimum staffing, not work year, and is not mandatorily negotiable.

ORDER

Article 11 Section 4 is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Smith, Bertolino, Wenzler, Johnson and Goetting voted in favor of this decision. None opposed. Commissioner Reid was not present.

DATED: November 26, 1990
Trenton, New Jersey
ISSUED: November 27, 1990