

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS AND
EXPOSITION AUTHORITY,

Employer,

-and-

SPORTS ARENA EMPLOYEES UNION
LOCAL 137,

Employee Organization,

SYNOPSIS

The Public Employment Relations Commission grants Sports Arena Employees Union Local 137's request for the invocation of impasse procedures. The New Jersey Sports and Exposition Authority is obligated to reopen negotiations during the life of the parties' agreement since legislation authorizing negotiations over Sunday racing has taken effect.

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Appearances:

For the Petitioner, Genova, Burns & Schott, attorneys
(Stephen E. Trimboli, of counsel)

For the Respondent, David Seliger, attorney

DECISION AND ORDER

On January 11, 1991, Sports Arena Employees Union Local 137 requested the appointment of a mediator to assist in resolving a dispute with the New Jersey Sports and Exposition Authority over additional compensation for Sunday racing. Local 137 claims that the parties agreed during their last negotiations that if Sunday racing, then prohibited by law, was ever authorized, negotiations would take place over whether work performed should be voluntary and paid a premium. Local 137 claims that the parties have had several meetings to discuss the issues and have reached impasse.

On January 15, 1991, the Authority responded. It opposes the appointment of a mediator because it claims that no contract

reopener was ever agreed to and no reopening of negotiations has occurred. The Authority states that at the one meeting held, it maintained that it has no obligation to reopen the contract or negotiate.

On January 18, 1991, the Chairman conducted a preliminary conference where the parties consented to this procedure for the resolution of this dispute. Both parties filed statements by February 19. These facts appear.

Local 137 represents employees in the Authority's pari-mutuel and admissions departments at the Meadowlands as well as employees at other race tracks in New Jersey. The parties entered into a collective negotiations agreement effective January 1, 1989 through December 31, 1991. At the time of the negotiations, Sunday racing was illegal. But Local 137 was aware of an impending attempt to get approval for Sunday racing through a public referendum as required by N.J. Const. (1947), Art. IV, §7, par.2. Local 137 therefore included in its negotiations proposals a demand that Sunday work be voluntary and paid a premium. The Authority rejected the proposals. According to Local 137, it withdrew the proposals with the understanding that should Sunday racing be authorized during the life of the contract, negotiations on that subject would take place. According to the Authority, it responded to Local 137's proposal by suggesting that the issue was premature and that the issue of premium pay was then dropped. The contract contains no reopener clause based on Sunday racing.


On November 6, 1990, a referendum authorizing Sunday racing was adopted. Sunday racing began on February 3, 1991. Local 137 immediately requested negotiations. The Authority was willing to discuss the issues, but not to negotiate. Local 137 requested the invocation of mediation and, if necessary, fact-finding.

Sunday racing was not permitted under State law prior to November 6, 1990. We have long held that a subject that is currently illegal and that depends on a future contingency is not mandatorily negotiable. Rutgers, the State Univ., P.E.R.C. No. 76-13, 2 NJPER 13 (1976); see also Watchung Hills Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 89-84, 15 NJPER 152 (¶20061 1989). We have also held that where a union could not negotiate over a subject because it was illegal, the employer was obligated to reopen negotiations during the life of the parties' agreement when legislation authorizing negotiations over the subject took effect. Wayne Bd. of Ed., P.E.R.C. No. 81-106, 7 NJPER 151 (¶12067 1981) (agency fees).^{1/} That rationale applies here. The Authority must therefore negotiate the issues severable from its decision to conduct racing on Sundays.

^{1/} This case does not involve a specific statutory command that the new legislation does not require the reopening of signed contracts. See, e.g., N.J.S.A. 18A:29-5 et seq.

Pursuant to this decision, Local 137's request for the invocation of impasse procedures under N.J.A.C. 19:12-3.1 et seq. will be processed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
March 28, 1991
ISSUED: March 28, 1991