

I.R. NO. 86-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS & EXPOSITION
AUTHORITY

Respondent,

-and-

Docket No. SN-86-93

LABORERS' LOCAL 472

Charging Party.

SYNOPSIS

A Commission designee denies the Petitioner's request for a restraint of arbitration proceedings initiated by the Respondent union. At the interim relief hearing a factual issue developed as to which a plenary hearing was required, namely, whether or not a Committeeman is an "officer or steward" within the meaning of IFPTE Local 195 v. State, 88 N.J. 393 (1982).

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INTERLOCUTORY DECISION AND ORDER

The above matter having been opened to the Public Employment Relations Commission on June 16, 1986, by M. Joan Foster, Esq., Grotta, Glassman and Hoffman, Esqs., attorneys for the above Petitioner, and the Commission's named designee, Alan R. Howe, having read the certified Petition for Scope of Negotiations Determination, the Petitioner's brief and affidavit in support of its request for temporary restraint of arbitration proceedings, pending before the New Jersey State Board of Mediation wherein the issue is the managerial right of the Petitioner to transfer or reassign Joseph Settee, a maintenance-laborer, and a recently elected Committeeman of the Respondent, from the detention barn to the main barn areas in the back stretch of the Meadowlands Race Track; and J. Sheldon Cohen, Esq., Schneider, Cohen and Solomon, Esqs., attorneys for the Respondent, having appeared in opposition

to the grant of temporary restraint of arbitration; and the undersigned having heard and considered the arguments of counsel for the parties on June 16, 1986; and the Petitioner being required to satisfy the two standards for the grant of interim relief, namely, the substantial likelihood of success on the merits as to the facts and the law and the presence of irreparable harm, the following decision is rendered:

1. If an issue is non-negotiable it is not subject to binding arbitration: Hunterdon Central H.S. v. Hunterdon Central H.S. Teachers' Assn., 174 N.J. Super. 468 (App. Div. 1980), aff'd., 86 N.J. 43 (1981).

2. The legal issue herein, involving the right of the Petitioner to transfer or reassign Joseph Settee, is governed by IFPTE Local 195 v. State, 88 N.J. 393 (1982), particularly, the narrow exception limiting an employer's right to transfer or reassign officers and stewards involuntarily, which, however, recognizes the need of the employer "to meet operational requirements," which must be weighed against the "employee's... interest in continuity of the relationship between employees and their bargaining representatives..." (88 N.J. at 419).

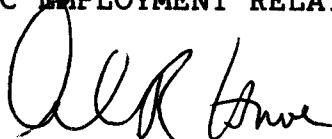
3. However, a material factual dispute appears to exist as to whether a "Committeeman" of the Respondent is an "officer" or a "steward" within the meaning of the Local 195 decision, namely, whether Settee, as an elected Committeeman, is meaningfully involved in the administration of the contractual grievance procedure as opposed to merely meting out overtime to other employees in the unit

by seniority. If Settee is found to be an "officer" or a "steward" under Local 195 then the transfer or reassignment of Settee is arbitrable, and if the contrary is found, the transfer or reassignment is non-negotiable and non-arbitrable.

4. Such a factual determination must await a hearing, which shall be ordered contemporaneously herewith and will take place on July 8, 1986, before the undersigned in the previously scheduled unfair practice matter involving the same parties and issue (CO-86-310-181).

Accordingly, it is HEREBY ORDERED that the Petitioner's request to restrain arbitration of the Joseph Settee grievance be and same is HEREBY DENIED pending the disposition of this matter by the Commission after hearing.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Alan R. Howe
Commission Designee

DATED: June 18, 1986
Newark, New Jersey