

I.R. NO. 86-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-86-36

DISTRICT 1199J, NUHHCE,
AFL-CIO,

Respondent.

SYNOPSIS

A designee of the Public Employment Relations Commission declines to issue a temporary restraint of arbitration in the matter brought by the County of Hudson ("County").

District 1199J of the NUHHCE, AFL-CIO ("Union") filed for arbitration over a transfer of an employee from the day shift to the evening shift. The Union claimed the transfer was for purposes of discipline. The County claims this transfer was for managerial reasons other than discipline. The designee held that in order to make a meaningful determination as to the true motivation of the petitioner County, it would be necessary to conduct a full hearing. In effect, the Commission would have to conduct its own hearing to determine if there should be an arbitration hearing.

Administrative economy would suggest that the Commission allow the arbitration to go forward and at least have the arbitrator make a preliminary determination as to the reasons for the disputed transfer.

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Appearances:

For the Petitioner
Murray & Granello
Nancy J. Kaloud, of counsel

For the Respondent
Oxford, Cohen & Blunda
(Arnold S. Cohen, of counsel)

INTERLOCUTORY DECISION

The County of Hudson ("County") brought the instant Scope of Negotiations petition before the Public Employment Relations Commission ("Commission") seeking a permanent restraint of arbitration. In addition, the County filed the instant motion for interim relief, seeking an interim restraint of this arbitration pending a full Commission decision in this matter.

District 1199J of the NUHHCE/AFL-CIO ("Union") sought arbitration with the County concerning the transfer of an employee from the day shift to the evening shift.

The union claimed that the transfer was a disciplinary act and, therefore, arbitrable. The County argues that the transfer was a result of a managerial decision to insure proper supervision of residents of the youth house. At the hearing both sides produced factual support of their respective positions and arguments.

If the transfers were for discipline, as claimed by the union, such a transfer would be grievable and arbitrable. See CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984), certif. den., _____ N.J. _____ (1984) ("CWA"); Bergen County Law Enforcement Group v. Bergen County Freeholders Bd., 191 N.J. Super. 319 (App. Div. 1983) ("Bergen County").

If the transfers were based upon a managerial decision, as claimed by the County, then said transfers would not be negotiable. See In re IFPTE Local 95 v. State, 88 N.J. 393, 414 (1982), Ridgefield Park Education Association v. Ridgefield Park Board of Education, 79 N.J. 144, 156 (1978), Deptford Township Board of Education, 6 NJPER 29 (¶ 11014, 1980).

The County has not established by a preponderance of the evidence that it would prevail on the facts here. The issue of the Board's motivation is very much an open question.

In order to make a meaningful determination as to the true motivation of the petitioning County, it would be necessary to conduct a full hearing. In effect, the Commission would have to conduct its own hearing to determine if there should be an arbitration hearing.

Administrative economy would suggest that the Commission allow the arbitration to go forward and at least have the arbitrator make a preliminary determination as to the reasons for the disputed transfer. If he should find that the transfer was predominately motivated by the managerial desire to provide the most efficient supervision of residents of the youth house, the arbitrator's decision concerning this transfer would not go further for the arbitrator may not inquire into the soundness of such a decision. If, however, the arbitrator determines that the transfer was predominately motivated by a desire to discipline the employees in question, he would be free to address whether such discipline is appropriate pursuant to the just cause provision of the contract between the parties.

If the County believes the the arbitrator's decision exceeds his authority or is otherwise violative of the act, it is free to come before this agency and seek a restraint of the implementation of the arbitration award.



Edmund G. Gerber
Commission Designee

DATED: December 19, 1985
Trenton, New Jersey