

P.E.R.C. NO. 88-103

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON COUNTY BOARD
OF CHOSEN FREEHOLDERS,

Petitioner,

-and-

Docket No. SN-87-86

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 1035, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Communications Workers of America, Local 1035, AFL-CIO against the Hunterdon County Board of Chosen Freeholders. The grievance alleges the County violated the parties' agreement when, during a snowplowing operation, the County assigned one employee instead of two to a truck. The Commission finds that the decision to assign one instead of two employees to a snow plow is predominantly a staffing decision and is not a mandatory subject of negotiations.

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Appearances:

For the Petitioner, Gaetano M. DeSapio, Esq.

For the Respondent, Alan B. Kaufman, Representative

DECISION AND ORDER

On June 18, 1987, the Hunterdon County Board of Chosen Freeholders ("County") filed a Petition for Scope of Negotiations Determination. The County seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local 1035, AFL-CIO ("CWA"). The grievance alleges the County violated the parties' agreement when, during a snowplowing operation, the County assigned one employee instead of two to a truck.

The parties have filed briefs. These facts appear.

The parties' 1986-87 collective negotiations agreement contains Article 11, entitled "Overtime." Article 11, Section E, "Equalization," provides, in part, that the parties intend that overtime should be distributed among employees on an equal basis and

that "The Employer will assign two (2) men to a truck for salting, cindering, and snowplowing...."

On January 21, 1987, CWA filed Policy Grievance No. 87-1, in which it alleged that two employees were each assigned to a truck alone on January 19, 1987, in violation of Article 11, Section E. The requested remedy was that the County give a written assurance that this would "not reoccur" and that the two employees lowest in the overtime group, who did not work because of the alleged violation, receive overtime pay for the time each truck was run by a single employee.

The County's position is that Article 11, Section E(2) is an illegal minimum staffing provision. CWA contends that this provision is a mandatorily negotiable safety clause which has been in the parties' collective negotiations agreements for years.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [78 N.J. at 154]

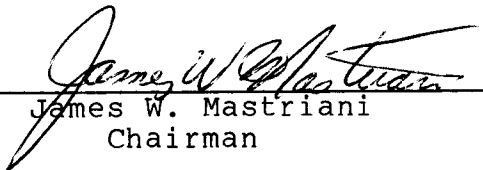
Accordingly, we only determine whether the County could legally agree to arbitrate this grievance.

The decision to assign one, instead of two employees, to a snow plow is predominantly a staffing decision and is not a mandatory subject of negotiations. Tp. of Readington, P.E.R.C. No. 84-7, 9 NJPER 533 (¶14218 1983); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983); Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14, 18 (¶12006 1980).

ORDER

The County's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Wenzler voted in favor of this decision. Commissioner Smith was opposed.

DATED: Trenton, New Jersey
April 27, 1988
ISSUED: April 28, 1877