P.E.R.C. NO. 98-159

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT OF MILITARY AND VETERANS AFFAIRS),

Petitioner,

-and-

Docket No. SN-98-21

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Department of Military and Veterans Affairs) for a restraint of binding arbitration of a grievance filed by the Communications Workers of America. The grievance asserts that the employer was contractually required to lay off employees in the non-supervisory titles of Armorer 3 and Armorer 4 before it laid off more senior employees in the supervisory titles of Armorer 1 and Armorer 2. The Armorer 3 and Armorer 4 titles belong in a separate negotiations unit not represented by CWA. Given the circumstances of this case, where a grievance is seeking to have non-unit employees laid off and, as a result, to increase the number of supervisors vis-a-vis non-supervisors, the Commission restrains binding arbitration.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Peter Verniero, Attorney General (Mary L. Cupo-Cruz, Senior Deputy Attorney General, on the brief)

For the Respondent, Weissman & Mintz, attorneys (Judiann Chartier, on the brief)

DECISION

On September 12, 1997, the State of New Jersey (Department of Military and Veterans Affairs) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America. The grievance asserts that the employer was contractually required to lay off employees in the non-supervisory titles of Armorer 3 and Armorer 4 before it laid off more senior employees in the supervisory titles of Armorer 1 and Armorer 2.

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

CWA represents a negotiations unit of primary level supervisors, including Armorers 1 and 2. Employees holding the titles of Armorer 3 and 4 belong to a separate negotiations unit of non-supervisory employees represented by the International Federation of Professional and Technical Employees.

The employer and CWA entered a collective negotiations agreement effective from July 1, 1995 through June 30, 1999. Article 29 is entitled Layoff and Recall for Unclassified and Provisional Employees. That article provides, in part:

> A. In the event management determines that a department-wide layoff due to financial exigencies or programmatic changes must take place which will affect unclassified or provisional employees the following procedure shall be observed:
>
> 1. The Union shall be notified of the layoff as far in advance as possible.
>
> 2. Affected employees shall be given a generalized notice of layoff at least forty-five (45) calendar days, prior to the reduction in force.
>
> 3. The State will supply the Union with relevant data concerning the layoff.
>
> 4. Employees serving in the same job classifications within the work unit affected who, in the judgment of management, have performed unsatisfactorily; or are lacking with respect to qualifications; or are lacking the abilities and/or skills necessary to perform current or future work assignments shall at the option of management be laid off first. Due consideration shall be given to the concepts of affirmative action.
>
> 5. Where, in the judgment of management, the elements set forth in paragraph 4. above do not distinguish employees affected by the

> reduction in force such employees serving in the same job classification within the work unit shall be laid off in inverse order of job classification seniority....
>
> 6. Nothing herein shall convey any bumping rights to employees covered by this article. Failure to comply with any element of this article shall not result in delaying the effectuation of the layoff, and any errors identified with respect to the application of this procedure shall be corrected on a prospective basis only. Back pay shall not be awarded.
>
> * * *
>
> 8. The term job classifications as used in this article shall encompass all titles within a title series. Hence, layoff will be based upon total seniority within a title series when applicable.

Armorers 1 and 2 are placed in the unclassified service. According to the Civil Service job descriptions, they work under the supervision of a Section Commander at a National Guard facility or as directed by the Regional Supervisor of Facilities and they themselves supervise personnel engaged in janitorial, maintenance, repair, and security work at their installations. Armorers 3 and 4 are also placed in the unclassified service. According to the Civil Service job descriptions, they work under the supervision of higher Armorer titles and perform janitorial, maintenance, and repair work at their installations.

On July 1, 1996, the Division of Military and Veteran Affairs laid off ten armorers in the supervisory titles of Armorer 1 and 2. CWA filed a group grievance asserting that these layoffs

violated Article 29 and asking that the layoffs be nullified. The grievance did not initially specify the way in which Article 29 was alleged to have been violated, but CWA's attorney later offered this specification of CWA's contractual claim:

> Paragraph A(8) of the unclassified layoff article provides that the term job classification shall encompass "all titles within a title series." Accordingly, a layoff must be based upon total seniority within a title series. When DMVA laid off armorers 1s and 2s it did not calculate their seniority based upon the total time in the armorer title series as required by contract. Had the DMVA properly calculated seniority, armorers 3s and 4s, with less total seniority in the title series, would have been laid off first. CWA maintains that armorers 1s, 2s, 3s and 4s are all in the same job classification and must be laid off in inverse order of job classification seniority within the work unit.

CWA demanded arbitration over this contractual claim.

The employer responded that Article 29 was illegal to the extent it required layoffs of employees in the Armorer 3 and 4 titles since CWA did not represent those titles. This petition ensued.[1/]

In its scope of negotiations brief, CWA has clarified that it is not arguing that employees in the Armorer 1 and 2

1/ The parties have also filed unfair practice charges concerning this dispute. The employer asserts in charge CE-97-6 that CWA committed an unfair practice by not specifying earlier the contractual claims it was grieving and seeking to arbitrate. CWA asserts in charge CO-97-14 that the employer committed an unfair practice by laying off employees in Armorer 1 and 2 titles because CWA would not agree to a proposed workweek reduction. Those charges are pending. We do not consider them now.

titles have a contractual right to bump into lower-rated positions if layoffs occur in their positions. Instead, it contends that the employer must lay off less senior employees in the Armorer 3 and 4 titles before if lays off more senior employees in the Armorer 1 and 2 titles. Thus, CWA's grievance, if sustained, would result in the employer having more supervisors and fewer non-supervisors than the employer believes appropriate.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

> 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.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

N.J.S.A. 34:13A-5.3 provides, in part:

> Representatives designated or selected by public employees for the purpose of collective negotiation by the majority of the employees in a unit appropriate for such purposes or by the majority of the employees voting in an election...shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit.

The exclusivity principle is the cornerstone of the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Lullo v. IAFF, 55 N.J. 409, 425-430 (1970); see also D'Arrigo v. New Jersey State Bd. of Mediation, 119 N.J. 74, 78 (1990). The employer asserts that Article 29 violates the exclusivity principle to the extent it allegedly determines the layoff rights and vulnerabilities of Armorers 3 and 4, non-supervisory employees who are represented in a different negotiations unit by a different majority representative than the Armorers 1 and 2. We have restrained negotiations and arbitration in cases where the contractual proposals and claims would have violated the exclusivity principle. See City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26, 29 (¶17010 1985); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300, 302 (¶16106 1985); Trenton Bd. of Ed., P.E.R.C. No. 83-37, 8 NJPER 574 (¶13265 1982), recon. den. P.E.R.C. No. 83-62, 9 NJPER 15 (¶14006 1982), aff'd NJPER Supp.2d 140 (¶123 App. Div. 1984). See also City of Newark, P.E.R.C. No. 96-53, 22 NJPER 67 (¶27030 1996), aff'd 213 NJPER 34 (¶28022 App. Div. 1996)(City could not rely on its contract with PBA to grant paid release time to employees in negotiations unit represented by FOP). In addition, the employer argues that it has a prerogative to determine the relative number of supervisors and non-supervisors performing armorer functions. Compare Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981)(employer need not

fill promotional positions). Given the circumstances of this case, where a grievance is seeking to have non-unit employees laid off and, as a result, to increase the number of supervisors vis-a-vis non-supervisors, we agree with the employer that arbitration must be restrained.

ORDER

The request of the State of New Jersey (Division of Military and Veterans Affairs) for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Buchanan abstained from consideration. Commissioner Wenzler was not present.

DATED: June 25, 1998
Trenton, New Jersey
ISSUED: June 26, 1998