

P.E.R.C. NO. 90-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

NEW JERSEY SPORTS  
& EXPOSITION AUTHORITY,

Petitioner,

-and-

Docket No. SN-90-19

PLUMBER'S LOCAL UNION NO. 14

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a contract proposal which Plumber's Local Union No. 14 seeks to include in a successor collective negotiations agreement with the New Jersey Sports and Exposition Authority is not mandatorily negotiable. The proposal would require at least one plumber working all events at the stadium. The Commission finds that the proposal predominately relates to minimum staffing and is not mandatorily negotiable. The Commission also restrains binding arbitration of a grievance alleging that the Authority violated a past practice by not having a plumber present during the time the union claims stadium restrooms were open. The Commission finds that the grievance also predominately relates to minimum staffing and is not mandatorily negotiable.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, Esqs.  
(M. Joan Foster, of counsel, Judith S. Miller, on the brief)

For the Respondent, Giblin & Giblin, Esqs.  
(Irving C. Evers, of counsel and on the brief)

DECISION AND ORDER

On October 19, 1989, the New Jersey Sports & Exposition Authority petitioned for a scope of negotiations determination. The Authority seeks to restrain binding arbitration of a grievance which Plumber's Local Union No. 14 has filed. The Authority also contends that proposed new language which the union seeks to include in a successor collective negotiations agreement is not mandatorily negotiable.

The parties have filed briefs, reply briefs, certifications and documents. These facts appear.

The Authority operates the Meadowlands Racetrack, the Brendan Byrne Arena and Giants Stadium. The Union represents a unit of the Authority's plumbers. The parties entered a collective

negotiations agreement effective December 1, 1985 through November 30, 1988.

During negotiations for a successor agreement the Union made the following proposal:

At least one (1) plumber working all events at Stadium.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 403-404]

The Union's contract proposal requires the Authority to assign at least one plumber whenever an event is held in the stadium. It is well established that whether to have a particular type of employee on duty and the number of such employees needed to provide a service are matters of managerial prerogative. See Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (¶19123 1988); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983).

This proposal predominantly relates to minimum staffing and is not mandatorily negotiable.

The Authority also seeks to restrain binding arbitration of a grievance alleging that a plumber should have been called in to work on May 20 and 21, 1989. A car show was scheduled to be held at the stadium from May 19 through May 21, 1989. On the first day a plumber installed a device on a fire hydrant to allow hoses to be hooked up to wash cars. No plumbers were called in to work on May 20 and May 21, and no plumbing work was performed at the stadium on those dates.

In addition to the car show, a United Cerebral Palsy Football Fundraiser was held at the stadium on May 20 and 21, 1989. According to a work order submitted by the Union, an attendance of 450 was expected and three stadium restrooms were to be open for the event.

The grievance concerns the car show and claims that the Authority violated the contract because "any work installed by the plumbers should be maintained by the plumbers." The Union now contends that the Authority violated a past practice by not having a plumber present during the time it claims the stadium restrooms were open for the fundraiser.

The Authority contends that the grievance seeks to establish a minimum staffing requirement which conflicts with its prerogative to decide when to assign a plumber. The Authority asserts that there is no work preservation issue because no one performed any work normally assigned to plumbers on the dates in question.

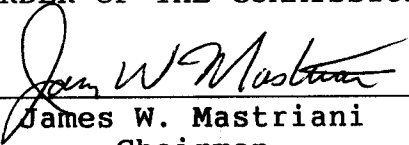
We find that the grievance predominantly relates to minimum staffing and is not mandatorily negotiable. In particular, we note that the grievance does not implicate Article 3 of the collective negotiations agreement which concerns hours of work and overtime or Article 9 which concerns safety and health. Nor does the grievance allege that work normally assigned to plumbers was performed by other employees. Cf. Piscataway Tp. Bd of Ed. v. Piscataway Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978); N.J. Sports & Expo. Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd App. Div. Dkt. No. A-4781-86T8 (5/25/88). Under these circumstances, the decision not to assign a plumber was a managerial prerogative and arbitration is restrained.

ORDER

The Union's proposal that at least one plumber work all events at the stadium is not mandatorily negotiable.

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

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
December 14, 1989  
ISSUED: December 15, 1989