P.E.R.C. NO. 2007-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY MUNICIPAL
UTILITIES AUTHORITY,

Petitioner,

-and-

Docket No. SN-2006-063

UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 1360,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Camden County Municipal Utilities Authority for a restraint of binding arbitration of a grievance filed by the United Food & Commercial Workers Union, Local 1360. The grievance alleges that the Authority violated the parties' collective negotiations agreement by denying vacation requests. The Commission concludes that so long as minimum staffing levels are not compromised, the MUA could have legally agreed to permit senior operators to make last minute vacation requests that require the use of overtime to ensure coverage. Local 360 may argue to an arbitrator that such an agreement was made and has been breached.

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, Lawrence E. Rosoff, Solicitor, on the brief

For the Respondent, Spear Wilderman, P.C., attorneys (Wendy Chierici, on the brief)

DECISION

On March 2, 2006, the Camden County Municipal Utilities Authority petitioned for a scope of negotiations determination. The MUA seeks a restraint of binding arbitration of a grievance filed by the United Food & Commercial Workers Union, Local 1360. The grievance alleges that the Authority violated the parties' collective negotiations agreement by denying vacation requests.

The parties have filed briefs and exhibits. The MUA has submitted an affidavit of its Director of Operations & Maintenance. These facts appear.

Local 1360 represents all full and regular part-time, non-professional employees. The parties' collective negotiations

agreement is effective from January 1, 2004 through December 31, 2007. The grievance procedure ends in binding arbitration.

Article XIII is entitled Vacation. It sets forth the number of vacation days granted to employees based on years of service. It provides:

> All requests will be honored by seniority up until March 15th of each year, then all remaining requests will be handled on a first come, first serve basis.

The Authority operates with six senior sewage operators on three shifts. Overtime is used to fill vacancies, with the exception of the first shift when other supervisors are already scheduled to be at work. The Director states that vacations days are automatically approved in accordance with the contract, even if approving the vacation results in overtime. The only exception is the automatic approval of single day vacation requests if the request results in overtime being incurred to cover the shift. He further states that the senior operators are encouraged to switch a shift with another senior to accommodate single day vacation requests. The Director states that single days are routinely approved, even when they result in overtime, to accommodate medical appointments, significant family functions and affairs, and other events that are beyond the employee’s control. The Director states that granting single day vacation requests at the last minute requires it to contact the remaining five seniors and order one of them to come in.

On September 20, 2005, Local 1360 filed a grievance alleging that Article XIII had been violated. The explanation of the grievance states:

> Senior Operators are being discriminated against based on denial of vacation requests. Senior Operators are submitting all vacation requests in advance in accordance with CCMUA policy. According to UFCW Article XIII - Vacation and CCMUA Policy 78-18 - Vacation - . . . permanent full-time employees in the Authority's service shall be entitled to the following annual vacation with pay. According to the chart, all Senior Operators are entitled to use 25 vacation days. All Senior Operators are being denied one day vacation requests. All other departments are being approved vacation time utilizing the Authority's overtime list to fill in the vacancy. Senior Operators are asking for the same courtesy to be used.

On September 28, 2005, the MUA's Executive Director denied the grievance. He wrote:

> The grievance alleges violation of Article XIII (Vacation) and CCMUA Code 78-16 (Vacation). In response to this grievance, the CCMUA has the right to deny an employee's vacation request when that person is needed for our minimum-manning requirements.
>
> I have had counsel review this issue. He finds that the right to deny vacation for minimum manning purposes is inherently managerial. Thus, it is not negotiable and non-arbitrable. Your grievance must therefore be denied. However, as stated in our previous meetings, the Authority is willing to continue to discuss this issue with the union.

The grievance was not resolved and Local 1360 demanded arbitration. This petition ensued.

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 merits of the grievance or any contractual defenses the employer may have.

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 404-405]

No preemption issue is presented.

The MUA argues that it has a managerial prerogative to set staffing levels and to deny last minute vacation requests that would interfere with those staffing levels. Local 1860 argues that an employer's managerial prerogative to set and maintain staffing needs is not infringed so long as it can fill a vacancy through overtime. It notes that the MUA can meet its staffing needs when granting single day vacation requests for certain reasons, and that it does not have a prerogative to decide when to make exceptions.

Galloway Tp., P.E.R.C. No. 2003-65, 29 NJPER 114 (¶35 2003), summarizes the case law on the relationship between vacation leave and minimum staffing:

> 1. Scheduling of vacation leave or other time off is mandatorily negotiable, provided the employer can meet its staffing requirements.
>
> 2. An employer may deny a requested leave day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take leave even though doing so would require it to pay overtime compensation to a replacement employee.
>
> 3. An employer does not have an inherent prerogative to unilaterally limit the number of employees on leave or the amount of leave time absent a showing that minimum staffing requirements would be jeopardized.

See also cases cited in Galloway. The present grievance falls within these boundaries and is legally arbitrable. So long as minimum staffing levels are not compromised, a prerogative Local 1360 concedes, the MUA could have legally agreed to permit senior operators to make last minute vacation requests that require the use of overtime to ensure coverage. Local 1360 may argue to an arbitrator that such an agreement was made and has been breached. Accordingly, we deny the MUA's request for a restraint of binding arbitration.[1/] Cf. Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983) (union may arbitrate grievance concerning which employees will work temporary assignments, but employer cannot be precluded from having sufficient number of employees on each shift).

1/ The MUA argues that Allentown Mack Sales and Service, Inc., 522 U.S. 359 (1998), is relevant to its claim that we should not permit the negotiability of costs and overtime. In Allentown, the Supreme Court criticized the National Labor Relations Board for applying a rule different from the one it had announced. In seeking to analogize Allentown to this case, the MUA argues that we should prevent arbitration over costs and overtime from emasculating the rule barring negotiations over minimum staffing levels.

Our jurisdiction is limited to restraining arbitration when an alleged agreement is preempted by statute or regulation or when that agreement would significantly interfere with the exercise of a managerial prerogative. Here, the employer's right to establish and maintain minimum staffing levels is a prerogative we must protect. A claim that the employer agreed to maintain minimum staffing levels during vacation periods through overtime does not compromise the employer's ability to maintain those staffing levels.

ORDER

The request of the Camden County Municipal Utilities Authority for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

ISSUED: August 10, 2006

Trenton, New Jersey