

P.E.R.C. NO. 2008-63

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC (PREAKNESS
HEALTHCARE CENTER),

Petitioner,

-and-

Docket No. SN-2008-010

AFSCME, COUNCIL 52, LOCAL 2273,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Passaic (Preakness Healthcare Center) for a restraint of binding arbitration of a grievance filed by AFSCME, Council 52, Local 2273. AFSCME seeks to arbitrate the issue of notice of layoffs at the Preakness Healthcare Center. The Commission holds that a public employer has a managerial prerogative to decide whether or not to lay off public employees, but procedural issues such as notice of layoff are mandatorily negotiable. The Commission finds this grievance legally arbitrable since it does not challenge the layoff decision, but whether the notice of the layoff complied with the collective negotiations agreement.

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, Genova, Burns & Vernioia, attorneys
(Brian W. Kronick, of counsel and on the brief;
Yaacov M. Brisman, on the brief)

For the Respondent, Szaferman, Lakind, Blumstein,
Blader & Lehmann, P.C., attorneys
(Sidney H. Lehmann, on the brief)

DECISION

On September 7, 2007, the County of Passaic (Preakness Healthcare Center) petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by AFSCME, Council 52, Local 2273. AFSCME seeks to arbitrate the issue of notice of layoffs at the Preakness Healthcare Center. We decline to restrain arbitration.

The parties have filed briefs and exhibits. The County has submitted the certification of Rosa Vizcarrondo, its Director of Human Resources. These facts appear.

The County is a civil service jurisdiction. AFSCME represents a unit of employees in various titles at the Healthcare Center. The parties' collective negotiations agreement is effective from July 1, 2006 through June 30, 2009. The grievance procedure ends in binding arbitration.

Article XVI is entitled Lay-off and Recall Procedure. It provides, in pertinent part:

16.1 Layoff:

a) In the event the Employer plans to lay off employees for any reason, the Employer shall meet with the Union to review such anticipated layoff at least thirty (30) days prior to date such action is to be taken.

* * *

d) Employees to be laid off will have at least forty-five (45) calendar days notice of layoff.

Due to severe budgetary constraints, the County needed to lay off employees. It explored options to limit layoffs, including separating non-permanent employees rather than laying off permanent employees. These layoffs included provisional employees at the Healthcare Center.

On April 30, 2007, the County sent a letter to six provisional employees. The letter stated that the County was facing a severe budget crisis and at the March 22 Freeholder meeting the administration was directed to develop plans to reduce the County staff to meet budgetary requirements. The

letter further provided that the provisional employees would be laid off on May 4.

On May 16, 2007, AFSCME filed a grievance alleging that the layoffs violated Article XVI. A grievance hearing was held and on May 30, a County hearing officer found that the six employees were provisional employees within the definition of N.J.A.C. 4A:1-1.3 and not entitled to the protection of Article XVI(a) and (d) and that the County did not violate the parties' agreement.

On July 13, 2007, AFSCME 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]

The County argues that this grievance is preempted by statutes and regulations permitting the County to lay off employees. It argues that under N.J.S.A. 11A:8-1(a), permanent employees may be laid off for economy, efficiency or other related reason. The County further argues that Department of Personnel regulations also provide that appointing authorities shall first separate non-permanent employees. N.J.A.C. 4A:8-1.3(a)(2).

AFSCME argues that its grievance seeks to arbitrate the question of 30-days' notice to AFSCME and 45-days' notice to the provisional employees required by the parties' contract. It does not seek to reverse the layoffs or substitute other employees for layoff. AFSCME maintains that procedural issues involved in the layoffs such as notice are mandatorily negotiable.

A public employer has a managerial prerogative to decide whether or not to lay off public employees. New Jersey Turnpike Auth., P.E.R.C. No. 96-25, 21 NJPER 361 (¶26223 1995). However, procedural issues such as notice of layoffs are mandatorily negotiable. Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523, 531 (1985); Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992) (finding notice of layoff in civil service jurisdiction to be mandatorily negotiable). Because the grievance is not challenging the layoff decision, but whether the notice provided to AFSCME and the provisional employees complied with the collective negotiations agreement, we find the grievance to be legally arbitrable.

ORDER

The request of the County of Passaic for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: May 29, 2008

Trenton, New Jersey