

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUNTERDON,

Petitioner,

-and-

Docket No. SN-81-26

COUNCIL 15, NJCSA, a/w CWA,
Local 1035,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines in a grievance arbitration context, that the notice provisions of Article 26, Economy Layoffs, of the collective negotiations agreement between the parties is both negotiable and arbitrable in that the language of the provision does not inhibit the Board's discretion to undertake layoffs. However, the Commission finds that the first paragraph of Article XX, requiring the employer to demonstrate that an "economy lay-off" is undertaken for actual reasons of economy prior to implementation, is an impermissible restriction on the employer's managerial prerogative to determine the criteria for lay-off and is accordingly non-negotiable and non-arbitrable.

Accordingly, the Commission concludes that the instant matter may be submitted to binding arbitration if otherwise arbitrable under the parties' contract.

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Appearances:

For the Petitioner, Harper & O'Brien, P.A.
(John J. Harper, of Counsel)

For the Respondent, Fox and Fox, Esqs.
(Richard H. Greenstein, of Counsel)

DECISION AND ORDER

On October 28, 1980, the County of Hunterdon (the "County") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the County and Council 15, NJCSA, affiliated with CWA, known as Local 1035 ("Council 15") are within the scope of collective negotiations. In the instant dispute, Council 15 seeks to submit to binding arbitration an alleged violation of Article 26, Economy Layoffs, ^{1/} of the current agreement between the parties. By

1/ Article 26, Economy Layoffs reads as follows:

Employees to be laid off shall be sent written notice; layoff(s) shall be according to rules of the Civil Service Commission.

An employee covered by this Agreement who is laid off pursuant to the provisions hereof, may file a grievance complaining of the layoff, in which case, the employee shall

(continued)

agreement of the parties, the arbitration has not proceeded pending this Commission decision.

The County alleges that provisions of Article 26 involve substantive matters of management prerogative and are therefore not subject to arbitration. Secondly, it contends the provisions are preempted by or contravene Civil Service statutes. Council 15 argues that the provisions of Article 26 are procedural requirements which do not interfere with inherent management prerogatives to determine layoffs and are therefore mandatorily negotiable and arbitrable.

Numerous Commission and judicial decisions have held mandatorily negotiable contract provisions granting procedural protections to employees relating to layoffs.^{2/} The language of the first paragraph of Article 26 requires the employer, in good faith, to demonstrate or show the Association that the "economy layoff" is for an economy before the time of implementation, to

1/ (continued)

only take the grievance beyond Step 1 to the Civil Service Commission, in accordance with Civil Service Procedures, notwithstanding the language of Paragraph (b) under Step 1 of Article 27, "Grievance Procedure," providing an option to employees to take grievances either to the Civil Service Commission or to arbitration.

2/ See, In re Cinnaminson Twp. Board of Education, P.E.R.C. No. 78-46, 4 NJPER 79 (¶4039 1978); State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); Ridgefield Park Ed Ass'n v. Ridgefield Park Bd of Ed, 78 N.J. 144 (1978); Maywood Ed Ass'n v. Maywood Bd of Ed, 168 N.J. Super. 45 (App. Div. 1979); In re Monroe Twp. Bd of Ed, P.E.R.C. No. 80-146, 6 NJPER 301 (¶11143 1980); In re East Orange Bd of Ed, P.E.R.C. No. 81-25, 6 NJPER 435 (¶11220 1980) and In re Deptford Bd of Ed, P.E.R.C. No. 81-47, 7 NJPER (¶_____ 1981).

provide written notice to the employees involved in the layoff and to be carried out in accordance with the rules of the Civil Service Commission. The first sentence of the provision which reads in part "has first demonstrated the need for economy to the Association" is an impermissible restriction on the employer's managerial prerogative to determine the criteria for layoff and is therefore non-negotiable and non-arbitrable.^{3/} The remainder of the provision does not require that the employer bargain over or justify the layoff and is mandatorily negotiable and arbitrable.

Compliance with the procedural aspects of the first paragraph is the only issue before the arbitrator. As we said in Deptford, supra, footnote 2:

The goal of arbitration is to afford the parties an expeditious and uncomplicated method for the resolution of their disputes in a form agreed upon and designed by them during negotiations.

Issues as to facts, alleged actions, employer defenses to the alleged violation, or if in fact there is a valid arbitration clause and the question of arbitrability under the contract itself are for the arbitrator. In re Belvidere Board of Education, P.E.R.C. No. 78-5, 3 NJPER 226 (1977). In the instant grievance, the only question before the arbitrator would be whether, in fact, the County complied with the procedural requirements of the first paragraph of Article 26. For these reasons, we find

^{3/} See In re Camden County Board of Chosen Freeholders, P.E.R.C. No. 81-71 (1980).

the question of the compliance with the negotiable part of paragraph 1 of Article 26 both negotiable and arbitrable.

The County also argues that N.J.A.C. 4:1-16.1^{4/} preempts the contract provisions of Article 26. Under State Supervisory Employees, 78 N.J. 54 (1978), preemption depends on:

Whether the statute(s) or regulations speak in the imperative...(or) permit a public employer to exercise a measure of discretion...
At 81.

(imperative or mandatory) are those enactments which set up a particular scheme which (shall) be handled as directed...
At 82.

The statute cited in the instant case allows the appointing authority discretion in that (it) "may layoff" an employee for economic or other valid reason. The contract provision specifically directs that employer actions shall be according to the rules of the Civil Service Commission and employee appeals and challenges on the merits shall be taken before the Civil Service Commission. The procedural portions of the contract provision at issue does not interfere with the employer discretion in layoffs for economic or other good reason.

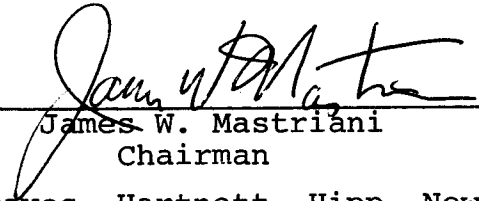
ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the instant grievance of Council 15 is negotiable and arbitrable and

^{4/} N.J.A.C. 4:1-16.1: "The appointing authority may layoff an employee in the classified service for purposes of efficiency or economy or other valid reason requiring a reduction of the number of employees in a given class.

may be submitted to binding arbitration if otherwise arbitrable under the parties' contract with the exception that the first sentence of the clause which we have found to be non-mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Hipp, Newbaker, Parcels and Suskin voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
April 16, 1981
ISSUED: April 20, 1981