

P.E.R.C. NO. 94-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-94-18

BUTLER BLUE COLLAR
WORKMAN'S ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association against the Borough of Butler. The grievance alleges that the employer violated the parties' collective negotiations agreement when it required electric division employees to punch time clocks at lunchtime. The Commission finds that the Borough has a managerial prerogative to require employees to implement timekeeping procedures, including sign in-sign out sheets and time clocks.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, attorneys
(Beth A. Hinsdale, of counsel)

For the Respondent, A.J. Fusco, Jr., P.A., attorney

DECISION AND ORDER

On May 27, 1993, the Borough of Butler petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Butler Blue Collar Workman's Association. The grievance alleges that the employer violated the parties' collective negotiations agreement when it required electric division employees to punch time clocks at lunch time.

The parties have filed a certification, exhibits, and briefs. These facts appear.

The Association represents the Borough's blue collar employees. The parties entered into a collective negotiations agreement effective from January 1, 1989 through December 31, 1991. The grievance procedure ends in binding arbitration.

On May 14, 1993, the line superintendent of the electric department issued a policy. That policy stated:

Beginning Monday, May 17, 1993, all electric division employees will be required to punch their time cards when leaving for and returning from lunch.

As always, no one will be permitted to loiter on the premises prior to or after lunch.

Those wishing to punch out earlier or later than the regular wash-up and lunch period may do so without any threat of disciplinary action--provided persons working together leave within one minute of each other and all return to punch back in within the allowable thirty-five (35) minutes.

Any exceptions to the above must be authorized by me.

The line superintendent issued the policy because he believed lunch time was being abused in the electric division. Employees in other departments and divisions are not required to punch in and out for lunch.

The Association filed a grievance. It asserts that requiring electric division employees, but not other employees, to punch in and out violated a contractual clause prohibiting discrimination based on Association membership or activity. The Borough denied this grievance.

On May 27, 1993, the Association demanded binding arbitration. It reasserted that the time clock policy violated the contract. It added an assertion that the contract had also been violated by a second policy prohibiting electric division employees from using Borough vehicles to transport food to DPW property.

The Borough then filed this petition. It has not sought to restrain arbitration over the second policy so we do not consider the negotiability or arbitrability of that policy.

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.

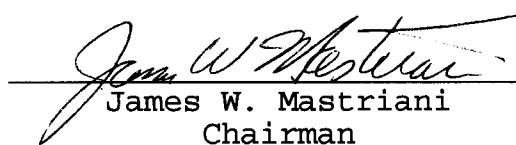
Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Borough may have.

The Borough has a managerial prerogative to require employees to implement timekeeping procedures, including sign in-sign out sheets and time clocks. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 135 N.J. Super. 269 (Ch. Div. 1975), aff'd 142 N.J. Super. 44 (App. Div. 1976); North Bergen Bd. of Ed., P.E.R.C. No. 92-5, 17 NJPER 378 (¶22177 1991); Town of Pennsauken, P.E.R.C. No. 80-51, 5 NJPER 486 (¶10248 1979). Any allegation that a managerial prerogative was exercised because of anti-union animus must be raised in an unfair practice charge. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983). Accordingly, we must restrain arbitration over the time clock requirement.

ORDER

The request of the Borough of Butler for a restraint of binding arbitration over the requirement that employee punch their time cards when leaving for and returning from lunch is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo and Regan voted in favor of this decision. None opposed. Commissioner Smith abstained. Commissioner Wenzler was not present.

DATED: November 15, 1993
Trenton, New Jersey
ISSUED: November 16, 1993