

P.E.R.C. NO. 82-78

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-82-9

F.O.P. LODGE NO. 85,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines Middlesex County College's Motion for Reconsideration of its decision in Middlesex County College and FOP Lodge No. 85, P.E.R.C. No. 82-57, 8 NJPER (¶ _____ 1982). Middlesex County College had requested reconsideration of the issue of whether campus police officers represented by F.O.P. Lodge No. 85 are engaged in performing police services within the meaning of N.J.S.A. 18A:6-4.5. The Commission observes that its discussion of this issue was dictum.

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Appearances:

For the Petitioner, Jackson, Lewis, Schnitzer
and Krupman, Esqs.
(Patrick L. Vaccaro, of Counsel)

For the Respondent, Robert Bradley Blackman, Esq.

DECISION ON MOTION FOR RECONSIDERATION

On August 28, 1981 Middlesex County College (the "College") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The College sought to restrain arbitration of a grievance which the Fraternal Order of Police, Lodge No. 85 (the "FOP") had filed. The grievance alleged that the College violated the parties' collective agreement when, for budgetary reasons, it terminated the employment of the grievant rather than an employee with less seniority.

On December 17, 1981 the Commission issued its Decision and Order, P.E.R.C. No. 82-57, 8 NJPER ____ (¶ 1981). The Commission declined to restrain arbitration. In reaching this decision, the Commission relied on cases stating that seniority as it relates to layoffs, bumping, and reemployment rights is a term and condition of employment, and mandatorily negotiable in the absence of preemptive statutes or regulations. State

of New Jersey v. State Supervisory Employees Assn, 78 N.J. 54, 81 (1978); Sports Arena Employees Local 137 v. New Jersey Sports and Exposition Auth., ___ N.J. Super. ___ (App. Div. Docket No. A-90-80-T2, decided November 12, 1981), pet. for certif. pending, Supreme Court Docket No. 18,212; Plumbers & Steamfitters Local No. 270 v. Woodbridge Board of Education, 159 N.J. Super. 83 (App. Div. 1978). The Commission also stated:

...these employees would appear to be employees engaged in performing police services, N.J.S.A. 18A:6-4.5, and would be covered by the provisions of the interest arbitration statute governing collective negotiations for police and fire employees. See, N.J.S.A. 34:13A-15. As such, these employees may negotiate and arbitrate on permissive as well as mandatory subjects of negotiations. N.J.S.A. 34:13A-16(b) and 16(f)(4); Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) (slip opinion at p. 7)

On January 22, 1982 the College filed a Motion for Reconsideration pursuant to N.J.A.C. 19:13-3.11.^{1/} The College does not dispute the Commission's interpretation of the cases, cited above, suggesting that the use of seniority in determining layoffs is a mandatorily negotiable term and condition of employment. Instead, the College contends that the Commission erred in stating that it would appear that the employees were covered by the interest arbitration statute governing collective negotiations for police and fire employees.

The College's motion does not ask us to rethink our determination that the grievance over the miscalculation of seniority could proceed to binding arbitration, and we note that our decision


^{1/} The College had received an extension of time to file this motion.

did not rely on the disputed statement. Therefore, we would still decline to restrain arbitration. Accordingly, we will not reconsider our Decision and Order.

However, we do note that the statement which the College seeks to dispute was dictum. Should questions concerning whether these employees perform police services or whether they are eligible for interest arbitration under the statute arise in the future, procedures to litigate these questions before us are available. Our decision should not be read to have determined those issues.

After thorough consideration of the College's motion, we find no basis to disturb our original decision. Thus, we hereby deny the motion.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Suskin, Hipp and Newbaker voted for this decision. None opposed. Commissioners Hartnett and Graves were not present.

DATED: Trenton, New Jersey
February 9, 1982
ISSUED: February 10, 1982