

P.E.R.C. NO. 96-25

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-96-6

LOCAL 194, IFPTE, AFL/CIO-CLC,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides that parts of a layoff provision contained in previous contracts and proposed by Local 194, IFPTE, AFL/CIO-CLC for inclusion in a successor contract with the New Jersey Turnpike Authority are not mandatorily negotiable. The Commission finds the provision is not mandatorily negotiable to the extent that its first sentence precludes layoffs unless caused by "an Act of God" and to the extent that its last sentence may be read to require the authority to "meet and negotiate" over a decision to layoff employees in the office, clerical and technical unit.

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, Schwartz, Tobia & Stanziale, attorneys  
(Frank R. Campisano, of counsel)

For the Respondent, Michael G. Frommer, President

DECISION AND ORDER

On July 18, 1995, the New Jersey Turnpike Authority petitioned for a scope of negotiations determination. The Authority seeks a declaration that parts of a contractual provision contained in previous contracts and proposed by Local 194, IFPTE, AFL/CIO-CLC for inclusion in a successor contract are not mandatorily negotiable. The parts of the provision in question concern decisions to lay off employees.

The parties have filed exhibits and briefs. These facts appear.

Local 194 represents a negotiations unit of the Authority's permanent, full-time toll collectors, utility workers, and maintenance employees, with specified inclusions and exclusions.

Local 194 also represents another negotiations unit of the Authority's permanent, full-time office, clerical and technical employees, with specified exclusions. The parties entered into a collective negotiations agreement effective from June 29, 1992 through July 2, 1995. Article XXII is entitled Layoff. It provides:

In the Operating Unit, layoffs will only occur as a result of an Act of God and shall be according to seniority within each department and each classification. Those laid off last will be the first offered reinstatement. Employees shall be advised a minimum of thirty (30) days in advance of any layoff. Seniority shall not be lost in the event of recall within two (2) years of the date of the employee's layoff. In the Office, Clerical and Technical Unit, before there are any layoffs of employees in the Unit, the Authority agrees to meet and negotiate with the Union concerning the conditions.

The sentences concerning the toll collection and maintenance unit (the operating unit) have appeared in the parties' contracts since 1970. The sentence concerning the office, clerical and technical unit has appeared in the parties' contracts since 1972.

The parties are engaged in negotiations over a successor contract. Local 194 has proposed that Article XXII be carried over into the successor contract. Responding that parts of Article XXII are not mandatorily negotiable, the Authority has filed the instant petition.

The Authority asserts that it has a prerogative to decide whether or not to lay off employees and that Article XXII is not mandatorily negotiable because its first sentence precludes layoffs absent "an Act of God" and its last sentence requires the Authority

to "meet and negotiate" before implementing layoffs in the office, clerical and technical unit. Local 194 responds that the "Act of God" provision has not significantly interfered with the Authority's operations since it took effect 25 years ago and that the last sentence is not a "no layoff clause," but a requirement to "meet and negotiate" concerning the conditions of the layoff. Local 194 also asserts that the Authority differs from other public employers because it is self-sufficient, using only funds raised by tolls and bond revenues. The Authority responds that it cannot waive its prerogative to lay off employees and that it is entitled to exercise the same prerogatives as other public employers covered by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

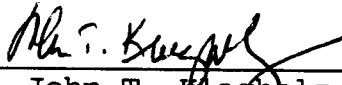
Well-settled case law establishes that New Jersey public employers have a managerial prerogative to decide whether or not to lay off public employees, although related procedural issues -- such as notice of layoffs -- are mandatorily negotiable. Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18 (1982); Local 195, IFPTE v. State, 88 N.J. 393 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 88 (1978); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 282 (1979); Stone v. Camden Cty. Freeholders Bd., 180 N.J. Super. 430 (Chan. Div. 1981). Such case law also establishes that a public employer's agreement to non-mandatory language in prior agreements does not waive its right not to negotiate over such non-mandatory language for future

agreements. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). The fact that the Authority has different funding sources than other public employers does not mean that its prerogatives are fundamentally different. We accordingly decide that Article XXII is not mandatorily negotiable to the extent that it precludes layoffs and to the extent that its last sentence may be read to require the Authority to "meet and negotiate" over a decision to lay off employees in the office, clerical and technical unit.

ORDER

Article XXII is not mandatorily negotiable to the extent that its first sentence precludes layoffs unless caused by "an Act of God" and to the extent that its last sentence may be read to require the New Jersey Turnpike Authority to "meet and negotiate" over a decision to lay off employees in the office, clerical and technical unit.

BY ORDER OF THE COMMISSION

  
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John T. Klagholz  
Acting Chairman

Acting Chairman Klagholz, Commissioners Boose, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Chairman Mastriani and Commissioner Buchanan abstained from consideration.

DATED: September 21, 1995  
Trenton, New Jersey  
ISSUED: September 22, 1995