

P.E.R.C. NO. 2002-76

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,

Petitioner,

-and-

Docket No. SN-2002-27

IFPTE, LOCAL 193 (TOLL SUPERVISORS  
OF AMERICA), AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the New Jersey Highway Authority for a restraint of binding arbitration of a grievance filed by IFPTE, Local 193 (Toll Supervisors of America), AFL-CIO. The grievance contests the assignment of toll supervisors to relieve toll collectors during breaks on the midnight shift at the Toms River toll plaza. The Commission concludes that arbitration of this grievance would not significantly interfere with the Authority's governmental policy right to manage its operations.

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, Apruzzese, McDermott, Maestro &  
Murphy, attorneys (Robert J. Merryman, on the brief)

For the Respondent, Oxfeld Cohen, attorneys (Arnold Shep  
Cohen, on the brief)

DECISION

On January 28, 2002, the New Jersey Highway Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of grievances filed by IFPTE, Local 193 (Toll Supervisors of America), AFL-CIO. The grievance contests the assignment of toll supervisors to relieve toll collectors during breaks on the midnight shift at the Toms River toll plaza.

The parties have filed briefs and exhibits. The Authority has submitted the certification of James L. Roberts, Tolls Facility Manager. These facts appear.

Local 193 represents all uniformed supervisory personnel in the Tolls Division, including assistant plaza supervisors, plaza supervisors and communication supervisors. The Authority and Local 193 are parties to a collective negotiations agreement effective from October 1, 1999 through September 30, 2003. The Authority has submitted the prior agreement effective July 1, 1994 through September 30, 1999. The grievance procedure ends in binding arbitration.

Article XV, Section 3 states that a supervisor is not required to perform work not in his or her job description. The job description for plaza supervisor, attached to the agreement, does not list relieving toll collectors on break. Nevertheless, supervisors at some toll plazas have relieved toll collectors on the midnight shift on and off for many years. In 1982 and 1983, grievances were filed concerning the issue and an arbitration was scheduled. The issue was resolved when the parties signed a Letter of Agreement. That Letter is included in the 1994-1999 agreement at page 36. It provides:

In the negotiations leading to the execution of the collective bargaining agreement covering the period July 1, 1984 through June 30, 1986, the parties have resolved a dispute concerning relief by Supervisors of Toll Collectors on the midnight shift in certain Plazas. Because of the nature of this dispute, and the language of Section XV 3 of the agreement, it is more appropriate to everybody [to place] this understanding in a side agreement than to amend the collective bargaining agreement itself. In return for this agreement, the Authority has made certain economic concessions to the Union, including its agreement to increase the

midnight shift differential from six percent (6%) to eight percent (8%) for all employees in the collective bargaining unit.

The Union agrees that its members will continue to relieve Toll Collectors on the midnight shift in those Plazas where this practice is presently in effect. The Authority agrees that it will not increase the number of Plazas at which Supervisors will be required to relieve Toll Collectors. It is the intent of the Authority to continue to reduce the number of Plazas at which this practice is in effect, based strictly upon business considerations as has been done in the past. However, the decision to reduce the number of such Plazas rests solely and exclusively with the Authority and is not subject to the Grievance Procedure.

The Union agrees that it will withdraw the grievance under Section XV over this issue which is now scheduled for hearing before Arbitrator Joseph Wildebush on August 20, 1984. The Union will notify the arbitrator that the dispute has been settled and will withdraw its demand for arbitration with prejudice.

This letter of understanding does not have an expiration date and will survive the termination of the collective agreement.

Prior to 2000, the Toms River toll plaza had one manual lane for northbound traffic and one manual lane for southbound traffic. Those lanes were next to each other so that a single toll booth with one collector could service both lanes. Prior to 1997, the toll supervisor relieved that toll collector while he or she was on break. In 1997, an additional toll collector slot was added, thus ending the need for the supervisor to perform relief duty.

However, the situation changed when EZ-Pass was implemented in 2000. The lanes were reconfigured and the manual

lanes were moved to the outer edge of the plaza so that it was not possible for a single collector to simultaneously cover both lanes of traffic. The toll supervisor was now required to provide break relief for both toll collectors.

On January 15, 2001, Local 193 filed a grievance (Grievance #804) contesting the assignment of tolls supervisors to provide relief coverage for toll collectors during breaks on the midnight shift at the Toms River toll plaza. Local 193 claims such assignments violate the letter of understanding and increase the workload of the toll supervisors. It argues that, under the Letter of Understanding, once the practice of having supervisors relieve toll collectors at a plaza was eliminated, it could not be reinstated. As a remedy, the grievance seeks to have the Authority revert to having toll collectors perform relief duties at the Toms River toll plaza.

On February 20, 2001, the Authority's manager of labor relations denied the grievance. On March 23, the grievance was denied following a step 3 hearing. The hearing officer's report noted that management believed that supervisors had enough time to complete their tasks and provide relief duty for two hours and twenty minutes of the shift. On May 1, 2001, Local 193 demanded arbitration.

On September 17, 2001, an arbitrator was appointed. On January 7, 2002, an arbitration hearing was held, at which the Authority argued, among other things, that the Letter of

Understanding was not enforceable through binding arbitration.

The arbitrator framed the issue as follows:

Is the matter arbitrable? If so, did the Authority violate the Letter of Understanding (page 36 of the Collective Bargaining Agreement) by requiring night shift supervisors at the Toms River Toll Plaza to break toll collectors? If so, what shall be the remedy?

On February 25, 2002, the arbitrator found the matter to be contractually arbitrable. As the Authority had requested in the event of such a ruling, she retained jurisdiction on the merits pending the outcome of this scope petition.

The Authority maintains that the grievance is not legally arbitrable because, if sustained, it would prevent the Authority from determining what work its employees will perform and from assigning toll supervisors to best meet its operational needs. The Authority asserts that it cannot change its forty-year practice of having supervisors relieve toll collectors without entailing significant hiring or overtime costs.

Local 193 counters that because the Authority did not file a petition prior to the arbitration hearing, it is barred from doing so now. It relies on Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983) and Newark Bd. of Ed., P.E.R.C. No. 95-79, 21 NJPER 465 (¶26102 1995). It also maintains that the grievance centers on the toll supervisors' increased workload, and that such increases are negotiable and arbitrable and may, in addition, trigger an obligation to negotiate over compensation.

Local 193 does not challenge the Authority's right to reconfigure toll plazas or determine the number of employees assigned to a shift but does challenge the assignment of extra work.

The Authority responds that we have jurisdiction to consider the petition because it was filed before the arbitrator addressed the merits of the grievance. It states that it did not file the petition sooner because there was no executed agreement and it took the position that, absent an enforceable grievance procedure, grievances were not arbitrable.

Finally, the Authority recognizes that compensation for workload changes is mandatorily negotiable. However, it asserts that the grievance does not seek additional compensation, but contests the Authority's right to assign duties to employees within the scope of their job description and responsibilities. It notes that the grievance seeks an order from the arbitrator restraining the Authority from assigning supervisors to cover for toll collectors on break on the midnight shift.

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 Authority may have.

Preliminarily, we hold that we have jurisdiction to consider the petition. Unlike Newark and Ocean, this petition was filed before the arbitrator issued her ruling on contractual arbitrability and, of course, prior to a decision on the merits. Therefore, we will consider it.

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 parties' interests must be balanced in light of the issues and facts presented in each case. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).



Employees may seek to negotiate for contractual protections against being required to assume duties outside their job titles and beyond their normal duties. See Maplewood Tp., P.E.R.C. 97-80, 23 NJPER 106, 110 (¶28054 1997) and cases cited therein. Parties negotiate over compensation for a position given the amount, nature and difficulty of the work required. Obtaining contractual protection against the imposition of unrelated and out-of-title duties protects the integrity of the equation between the negotiated salaries and the required work. Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980); Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-49, 22 NJPER 403 (¶27220 1996).

Employers may unilaterally assign new duties if they are incidental to or comprehended within an employee's job description and normal duties. See, e.g., City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) (fire officers required to perform crossing guard or patrol duties connected to fires); Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984) (bus drivers required to pump gas); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982) (firefighters required to go on fire patrols). Employers may also unilaterally make assignments necessary to respond to emergencies. Maplewood.

Finally, increases in workload often trigger a negotiations obligation. Burlington Cty. College Faculty Ass'n v.

Bd. of Trustees, 64 N.J. 10 (1973); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977). Negotiated workload limits are enforceable through binding arbitration. See, e.g., Westfield Bd. of Ed., P.E.R.C. No. 2002-41, 28 NJPER 135 (133042 2002).

Balancing the parties' interests within this framework and given the particular facts presented, we conclude that the grievance is legally arbitrable.

Relieving toll collectors on break is not among the duties enumerated in the supervisor job description. That document details such "physical duties" as using the automobile pusher unit to remove disabled vehicles; receiving and storing bulk supplies; and replacing filled and damaged coin collection equipment. It also includes such administrative duties as preparing toll collector work schedules and assigning, training, evaluating and disciplining toll collectors. Thus, the parties originally negotiated a salary that did not contemplate supervisors' performance of toll collector duties.

Prior to the Letter of Understanding, a practice had evolved at some plazas where supervisors performed relief assignments on the midnight shift. In resolving a resulting grievance, the parties entered into a Letter of Understanding that recalibrated the equation between work performed and negotiated compensation: the Authority agreed to pay a differential for midnight shift supervisors and the supervisors agreed to continue performing relief duty at the plazas where that practice was in

effect. While the Toms River toll plaza was one such plaza at that time, it does not appear that supervisors at the plaza or other employees were ever required to cover for two employees before now. Toll plaza supervisors are now required to provide over two hours of non-supervisory coverage for each shift.


We conclude that the parties' collective negotiations agreement could legally preserve the relationship between the amount of relief work performed and the current rate of compensation as alleged by Local 193. Of course, whether the Letter protects supervisors in the way that Local 193 contends is for the arbitrator to decide.

We recognize the Authority's governmental policy right to manage its operations, including implementation of the EZ-Pass system. But arbitration of the grievance would not significantly interfere with that right. Local 193 does not challenge the Authority's right to reconfigure plazas and the Authority asserts only that it would entail significant costs if it were limited in its ability to assign supervisors to relief duties. That labor cost issue is a legitimate one, but it may be addressed in negotiations and does not warrant a restraint of binding arbitration. Woodstown-Pilsegrove; New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988). We will not speculate on what remedy an arbitrator may award should a violation be found.

ORDER

The request of the New Jersey Highway Authority for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Katz, McGlynn, and Ricci voted in favor of this decision. Commissioners Buchanan and Sandman abstained from consideration. Commissioner Muscato was not present. None opposed.

DATED: June 27, 2002  
Trenton, New Jersey  
ISSUED: June 28, 2002