

P.E.R.C. NO. 88-119

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY BOARD  
OF SOCIAL SERVICES,

Petitioner,

-and-

Docket No. SN-87-47

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO, LOCAL 1082,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, a request by the Middlesex County Board of Social Services to restrain arbitration of a grievance filed by the Communications Workers of America, Local 1082, AFL-CIO. The grievance challenges the unilateral assignment of Board cars without cost to certain employees. The Commission grants the request as to that portion of the grievance which challenges the criteria to determine which employees are qualified to take vehicles home. The Commission, otherwise, denies the request.

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Appearances:

For the Petitioner, Bernard Shihar, Esq.

For the Respondent, Steven P. Weissman, Esq.

DECISION AND ORDER

On February 9, 1987, the Middlesex County Board of Social Services ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain arbitration of a grievance filed by the Communications Workers of America, Local 1082, AFL-CIO ("CWA"). The grievance challenges the unilateral assignment of Board cars without cost to certain employees.

The parties have filed briefs and stipulate these facts.

1. As of December 9, 1986, the Middlesex County Board of Social Services had a fleet of 25 vehicles.

2. The sole purpose of the agency fleet is to conduct agency business.

3. Board vehicles are driven back and forth from work by a number of employees for different reasons.

4. One vehicle is assigned to the Director of the Middlesex County Board of Social Services to conduct agency business and is used for commuting purposes.

5. In addition to use for agency business, six vehicles are regularly used for agency-approved car pools. The drivers, as well as the passengers in the car pools, pay a car pool fee. All employees are eligible to participate in car pools. All participants are not covered by the CWA agreement. A passenger pays \$25 per month and a driver pays \$12.50 per month.

6. In addition to use for agency business, four vehicles are regularly assigned to administrative staff to commute back and forth from their homes. These vehicles are assigned in order to provide a secure parking space overnight.

7. Three vehicles are assigned overnight to social service personnel who provide transportation to clients who receive various forms of medical attention before, during and after regular working hours.

8. In addition to use for agency business, one vehicle is assigned overnight to the Building Service Supervisor to assist him in his job responsibilities.

9. Three vehicles are regularly assigned to three other employees to take the vehicles overnight for security reasons. These people are in the CWA bargaining unit. The selection was based on proximity of residence to office, trustworthiness, willingness and ability to secure the vehicle overnight.

10. Overnight during the work week, the remaining vehicles are either being serviced or remain parked on the agency's roof-top parking lot. On weekends and holidays, these cars are randomly assigned to employees to take home for security reasons. The criteria are the same as #9 plus availability.

11. For a number of years, various employees within the bargaining unit have been bringing cars home. In fact, this practice has been known to exist from at least the late 1960's.

12. Due to a recent IRS ruling, the agency reports the annual value of this transportation on the employee's W-2 statement. The value of transportation is reported for all employees using cars except car pool members who pay for the cars. The amount is \$3 per day if the distance is more than 7 miles one way and \$.21 per mile if 7 miles or less one way.

13. When a vehicle is taken by an employee overnight, the use is confined to only the trip between the office and the employee's home.

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 403-404]

The Board argues that it has been assigning vehicles to unit members of its choice without prior negotiation for 15 to 20 years; that it has a managerial prerogative to deploy its vehicles, including the right to select who gets them, and that even if the selection process is found negotiable, it should not be obligated to negotiate over this issue until the end of the present agreement because no prior demand had been made by the Union.<sup>1/</sup>

CWA maintains that under Morris Cty. Park Comm'n, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd App. Div. Dkt. No. A-795-82T2 (1/12/84), certif. den. \_\_ N.J. \_\_ (198\_\_), it has the right to negotiate over which unit members will receive a County car for commuting. It asserts that while the decision to assign the vehicles may be a managerial prerogative, either the criteria for such assignments or the means of selecting from among the employees meeting the criteria must be negotiable.

The use of a car for commuting intimately and directly affects the work and welfare of employees. In Morris Cty., we held that the decision to limit the use of County vehicles by certain

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<sup>1/</sup> This assertion is not relevant to a scope of negotiations determination. See Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144, 154 (1978).

bargaining unit employees was a non-negotiable managerial prerogative. 8 NJPER at 561. But we held that the employer had to negotiate over possible offsetting compensation for the loss of this longstanding economic benefit.

By granting some employees a car to take home each evening, the employer is providing them a convenience and reducing their commuting costs. However, the effect on employees must be balanced against the degree to which negotiating the assignment of vehicles would interfere with the Board's ability to determine governmental policy.

The managerial interest involved here is the Board's desire to provide a secure location for county vehicles outside of normal working hours to insure the vehicles' readiness for Board business. Vehicles are assigned primarily as a means of helping the employer maintain and secure its fleet of vehicles. Cf. Cape May Cty. Bridge Comm'n, P.E.R.C. No. 84-133, 10 NJPER 344 (¶15158 1984), aff'd App. Div. Dkt. No. 5186-83T6 (7/9/85). Accordingly, we believe the Board has a legitimate managerial prerogative to determine which employees will further its policy of securing its vehicles. The type of facility needed to secure the vehicle and proximity to the office are objective factors which concern the employer's need to insure its vehicles are ready to use for business.

While the employer has a right to determine the basis for assigning vehicles, there may be more employees who meet its chosen standards than there are available vehicles. Accordingly, a


procedure to determine which of the qualified pool of employees receives the vehicles would be negotiable. We have held for example that seniority may be used to determine which police officers will perform overtime assignments so long as the employer's ability to select officers having special skills is not compromised. See Bound Brook Tp., P.E.R.C. No. 88-30, 13 NJPER 760 (¶18287 1987). Any such negotiated procedure would be applied after the employer has approved a pool of eligible employees. The union may also negotiate a procedure which notifies CWA of the employees in that pool.

We find that the criteria for allocating cars are not negotiable, but that the methods for choosing among qualified employees are.

ORDER

The Board's request for a restraint of arbitration is granted as to that portion of the grievance which challenges the criteria to determine which employees are qualified to take vehicles home. The request for a restraint is otherwise denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
April 27, 1988  
ISSUED: April 28, 1988