

P.E.R.C. NO. 2003-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2003-43

IFPTE LOCAL 200, NEW JERSEY
TURNPIKE SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the New Jersey Turnpike Authority for a restraint of binding arbitration of grievances filed by IFPTE Local 200, New Jersey Turnpike Supervisors Association. The grievances contest the decisions of the Authority not to fill some supervisor vacancies, to assign permanent line supervisors to cover vacancies at other interchanges, and to change work schedules and transfer supervisors to other interchanges to cover vacancies. The Commission grants a restraint to the extent the grievances seek to require the Authority to fill vacant positions or seek to prevent the employer from reassigning permanent line supervisors to cover vacancies during their regular work hours at other toll plazas. The request for a restraint is otherwise denied.

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, Sedita
& Campisano, P.C., attorneys (Frank R. Campisano, on
the brief)

For the Respondent, Leonard C. Schiro, attorney, on the
brief

DECISION

On February 24, 2003, the New Jersey Turnpike Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of grievances filed by IFPTE Local 200, New Jersey Turnpike Supervisors Association. The grievances contest the decisions of the Authority not to fill some supervisor vacancies, to assign permanent line supervisors to cover vacancies at other interchanges, and to change work schedules and transfer supervisors to other interchanges to cover vacancies.

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

Local 200 represents all full-time supervisors in the maintenance and toll collection departments. The parties' collective negotiations agreement is effective from September 20, 1999 through September 28, 2003. The grievance procedure ends in binding arbitration.

Article VIII, Section B(10) provides:

Shift and location assignment schedules are based on a Job Classification Seniority based bidding procedure. Other than as a result of said bidding procedure, no person shall have his/her assignment changed except to meet an unforeseeable emergent circumstance affecting the welfare of patrons.

Toll plaza supervisors administer toll collection revenues collected at their assigned interchanges and supervise toll collectors. Plaza supervisor vacancies are generally filled by certain plaza supervisors designated as "reserve" who travel and cover vacancies at other interchanges within their assigned section. When no reserves are available, a supervisor is either held over from the previous shift and works two consecutive shifts or a supervisor is called in to work both the preceding tour and the regularly scheduled tour. Supervisors who are held over or called in are paid overtime for the extra eight-hour tour.

According to the Authority, poor attendance by supervisors had resulted in increased overtime compensation paid to other supervisors covering vacancies caused by absences. To reduce

overtime payments, the tolls department chose not to cover certain supervisor vacancies. The Authority states that it determines what vacancies to leave unfilled after considering factors such as traffic flow and manpower allocation. These determinations sometimes resulted in the reassignment of plaza supervisors from their regularly assigned plaza to vacancies at different interchanges. Plaza supervisor interchange assignments are referred to as "permanent lines" and are established in advance by the tolls department.

Local 200 began filing grievances in November 2000 contesting the Authority's decision not to fill certain plaza supervisor vacancies. The statement of the grievance in one of the grievances challenges an alleged "failure to cover a scheduled tour, Int. 18W 11/12/2000, 3 tour" and seeks "8 hours pay at time and one half." From November 2000 to April 2001, approximately 189 such grievances were filed.

Beginning in January 2000, Local 200 filed two other types of grievances. The first alleges that permanent line supervisors were used to cover vacant tours at other interchanges. These grievances are referred to as the "permanent line" grievances. The second alleges that plaza supervisors had their work schedules changed and were transferred from their assigned interchange to cover vacancies at other interchanges. The

Authority refers to these grievances as the "transfer" grievances.

All of the grievances were apparently denied at the first step. On January 7, 2003, Local 200 demanded arbitration. This petition ensued.^{1/}

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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

^{1/} On October 18, 2002, the Authority filed a scope of negotiations petition concerning these grievances. However, Local 200 had not sought arbitration of the grievances. On January 25, 2003, the Authority withdrew the petition, without prejudice. It stated that it intended to re-file the petition in the event Local 200 sought to arbitrate the grievances.

[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).

The Authority argues that the grievances infringe on its managerial prerogatives to determine staffing requirements and whether or not to schedule overtime.

Local 200 responds that the Authority seeks to limit the issue to staffing levels, but that this case centers on the mandatorily negotiable issue of overtime allocation. It argues that when the predominant issue is not staffing levels, who fills a vacancy is mandatorily negotiable. It further argues that the Authority's only reason for altering the practice is economic and does not impinge on any managerial prerogatives. Finally, Local

200 argues that the grievances alleging work schedule changes due to interchange transfers are mandatorily negotiable.

The Authority replies that this dispute does not involve the allocation of overtime, but the Authority's prerogative to not fill vacancies.

The first set of grievances challenges the employer's decision not to cover vacant positions through overtime assignments. A public employer has a managerial prerogative to determine when governmental services will be delivered and the staffing levels associated with the delivery of those services. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). An overtime guarantee cannot be used to require an employer to deliver services when it chooses not to do so. Management has the prerogative to leave certain supervisory positions vacant. Accordingly, we restrain arbitration over the first set of grievances.

The second set of grievances challenges the employer's decision to use permanent line supervisors to cover vacancies at other interchanges. Unlike the first set of grievances, the employer has decided to fill a vacancy and the dispute is over whether the employer can reassign already scheduled employees in the same job title to perform that work, given the employer's assessment of traffic flow and staffing needs. Public employers have a non-negotiable prerogative to assign employees to


particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Park Ed Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). Cases involving overtime allocation are inapt. These grievances do not involve the question of which of two groups of qualified employees will be called in to perform overtime work. The supervisors assigned to cover the vacancies were simply reassigned from other interchanges, without any apparent effect on work hours or others terms and conditions of employment. Accordingly, we restrain arbitration over the second set of grievances.

The third set of grievances allege work schedule changes in violation of Article VIII and certain other contractual provisions. The employer has not argued that it has a prerogative to change employee work schedules to cover for vacant positions. Such issues are generally negotiable and subject to binding arbitration. See, e.g., Camden Cty., P.E.R.C. No. 2003-54, 29 NJPER 34 (¶12 2003) (clause which provides that work schedules shall not be changed for purpose of avoiding payment of overtime is negotiable and enforceable because it protects the employees' interests in negotiating over their work hours and does not interfere with any governmental policy interests); see also Woodbridge Tp., P.E.R.C. No. 2003-55, 29 NJPER 16 (¶4 2003).

ORDER

The request of the New Jersey Turnpike Authority for a restraint of binding arbitration is granted to the extent grievances seek to require the Authority to fill vacant positions or seek to prevent the employer from reassigning permanent line supervisors to cover vacancies during their regular work hours at other toll plazas. The request is otherwise denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: June 26, 2003
Trenton, New Jersey
ISSUED: June 27, 2003