

P.E.R.C. NO. 2012-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PLAINSBORO,

Petitioner,

-and-

Docket No. SN-2012-001

TEAMSTERS LOCAL 701,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Plainsboro for a restraint of binding arbitration of a grievance filed by Teamsters Local 701. The grievance alleges the Township violated the parties' collective negotiations agreement when the assistant foreman performed work customarily performed by unit employees. The Commission holds that the grievance is not arbitrable as the Township has a managerial prerogative to complete a project in an efficient and timely manner.

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, Ruderman & Glickman, P.C.,
attorneys (John A. Boppert, of counsel)

For the Respondent, Cohen, Leder, Montalbano &
Grossman, attorneys (Paul A. Montalbano, of counsel)

DECISION

On August 8, 2011, the Township of Plainsboro petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Teamsters Local 701. The grievance alleges that the Township violated the parties' collective negotiations agreement when the assistant foreman performed work that is customarily performed by unit employees in the Department of Public Works during a non-emergency.

The parties have filed briefs. The Township has filed a certification of the Superintendent of Public Works and exhibits. Local 701 has not filed a certification supporting any of the

facts asserted in its brief. N.J.A.C. 19:13-3.5(f)(1). These facts appear.

Local 701 represents all machine operators, laborers, assistant mechanics and mechanics employed by the Township. The Township and Local 701 are parties to a collective negotiations agreement effective from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration.

On May 13, 2011, an assistant foreman assigned to supervise a crew cutting grass assisted the crew after their shift for one hour of overtime to complete the task. According to Local 701, the assistant foreman sent half of the unit employees back to the shop to clock out and maintained three employees on overtime to cut grass with his assistance.^{1/} The superintendent certifies that on the afternoon in question, he was notified that an athletic field maintained by the Township had to be prepared for a 7:00 p.m. baseball game. He immediately assigned the assistant foreman to the location with three unit employees who were to cut the grass. As the task was not completed by the end of the employees' shift, the crew remained for one hour of overtime and the assistant foreman then assisted them to ensure the task was completed. The superintendent certifies that no member of this crew was sent home prior to the task being completed. Local 701

^{1/} As previously noted, Local 701 does not provide a certification to support these facts and therefore we cannot accept them as true.

has not submitted a certification disputing the superintendent's explanation of the facts.

On May 18, 2011, Local 701 filed a grievance contesting the foreman's participation in the grass cutting and seeking one hour of overtime for the next senior unit member who was not called to the field to complete the task. Attached to the grievance is a November 3, 2006 letter from a former Superintendent of Public Works settling a grievance which states, "Going forward the Assistant Foreman will not work independently unless an active emergency is present." The grievance was denied at all steps and Local 701 demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.

[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

The unit work rule provides that an employer must negotiate before using non-unit employees alone. In City of Jersey City v.

Jersey City POBA, 154 N.J. 555 (1998), the New Jersey Supreme Court stated that the unit work rule typically applies to require negotiations before workers in a negotiations unit are replaced by workers outside the negotiations unit. The objective of the rule is to provide a majority representative with an opportunity to negotiate over an acceptable alternative that would avoid a loss or a reduction in union membership. Id. At 576. However, the Court also ruled that the unit work rule cannot be applied on a per se basis. Instead, the negotiability balancing test as set forth in Local 195, IFPTE v. State, 88 N.J. 393 (1982), must be applied to the facts of each particular unit work claim.

Local 195 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 Township argues that the assistant foreman was only temporarily assisting the unit crew to complete the baseball field preparation and therefore the unit work rule does not prohibit the assignment. It further asserts that the determination as to whether an emergency exists is a prerogative of the employer.

Local 701 responds that the cutting of grass for one hour is neither an emergency nor temporary; the employer did not have a prerogative to permit the assistant foreman to assist the crew; and there are no policy determinations at stake.

The Township replies that none of the unit members who were assigned to the athletic field crew were replaced by non-unit employees and all of them remained on overtime.

Jersey City provides that the issue of unit work is mandatorily negotiable and no preemption argument has been made. Accordingly, we must balance the parties' interests to make a determination as to whether permitting arbitration of the grievance would significantly interfere with a determination of governmental policy.

If emergency conditions exist, a public employer may deploy its workforce to respond, even if doing so may deviate from normal employee assignments or overtime allocation. See Hunterdon Cty, P.E.R.C. No. 83-86, 9 NJPER 66 (¶14036 1982). (a public employer has a reserved right to make emergency

assignments to protect the public interest and to assign employees with special skills and qualifications to perform a specific overtime task). If the assignment is temporary in nature, it may not be mandatorily negotiable if "any erosion of unit work would be temporary and minimal." State-Operated School Dist. Of the City of Newark and City Ass'n of Supervisors and Administrators, AFSA/AFL-CIO, Local 20, P.E.R.C. No. 2001-10, 26 NJPER 368 (¶31149 2000), aff'd in part, 28 NJPER 154 (¶33054 App. Div. 2001); Tp. of Ocean, P.E.R.C. No. 2011-90, ___ NJPER ___ (¶___ 2011).

Here, the Township has an interest in ensuring that the field was maintained in time for a baseball game that evening. Unit employees were deployed to cut the grass and when it was not completed, overtime was authorized for the entire crew and the assistant foreman helped them to ensure the field was completed in time. Local 701 has an interest in preserving its unit work, but to require the Township to call another employee to the field where they were not assigned during their normal day for overtime to have the assistant foreman watch the crew in a time-sensitive operation would significantly interfere with the Township's prerogative to complete this task in an efficient and timely manner. Here, the assignment of the assistant foreman was in response to a time emergency and was temporary in nature lasting less than one hour.

ORDER

The request of the Township of Plainsboro for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: May 31, 2012

Trenton, New Jersey