

P.E.R.C. NO. 2015-6

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SOMERSET,

Petitioner,

-and-

Docket No. SN-2014-028

SOMERSET COUNTY DRIVERS  
AND AIDES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the County of Somerset for a restraint of binding arbitration of a grievance filed by the Somerset County Drivers and Aides Association. The grievance asserts that the County violated overtime procedures when it offered 4-H fair overtime driving opportunities to drivers from both the minibus and motor coach overtime rotation lists. The Commission holds that the increased passenger loads for the 4-H fair buses did not create an emergent situation allowing for deviation from mandatorily negotiable overtime allocation procedures because the situation was anticipated by the County several days in advance and the record does not show that assigning overtime exclusively from the minibus list would have resulted in a shortage of qualified drivers.

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. (Mark S. Ruderman, of counsel)

For the Respondent, Oxfeld Cohen, P.C. (Samuel B. Wenocur, of counsel)

DECISION

On October 25, 2013, the County of Somerset filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Somerset County Drivers and Aides Association. The grievance asserts that the County violated overtime procedures when it simultaneously used the minibus and motor coach overtime rotation lists when selecting drivers for overtime opportunities during the annual 4-H fair. We decline to restrain arbitration.

The County filed briefs, exhibits, and certifications of its Transportation Director. The Association filed a brief,

exhibits, and the certification of its Association President.

These following facts have been gleaned from the record.

The Association represents a unit of County transportation division employees including mini bus drivers, motor coach operators, in-home service workers, transportation aides and home delivered meals drivers. The County and Association are parties to an Agreement effective from January 1, 2010 through December 31, 2012. Article 5.3 sets forth that when the County designates overtime, the rotation of drivers will be as per the overtime rotation procedures, which will be reviewed periodically by Labor and Management and only modified with the agreement of both parties. The grievance procedure ends in binding arbitration.

The Overtime Rotation Procedures<sup>1/</sup> establish that two lists of drivers for overtime will be maintained- one for mini bus drivers or motor coach operators who are fully qualified to drive a motor coach and one for mini bus drivers who are not qualified to drive a motor coach, and provides procedures for utilizing the lists to allocate overtime.

The County's annual 4-H fair is held for about three days in August, and the County assigns drivers to drive patrons to and from the 4-H fairgrounds. The Association's President certified that from when the Association was formed in 2009 through 2012,

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<sup>1/</sup> This document was previously named "Special Run Rotation Procedures."

the County selected drivers exclusively from the minibus drivers' overtime rotation lists for overtime, and that since many minibus drivers were eligible to also drive motor coaches, the County relied exclusively on the minibus drivers overtime list, even for the driving of the motor coaches during the 4-H fairs. The Association's President further certified that in making overtime assignments for the 2013 4-H Fair, the County selected drivers off both the minibus drivers' overtime rotation list and the motor coach drivers' overtime rotation list, and as a result of the use of both lists some drivers were assigned two overtime shifts and other available drivers were not assigned any overtime shifts.

The County's Transportation Director certified that several days in advance of the 4-H Fair, both overtime lists were used to assign overtime in an effort to plan proactively since heavier loads of passengers were anticipated, and motor coaches can accommodate more people than mini buses. Moreover, she certified that on two of the three days of the 4-H Fair additional drivers were assigned based on changing conditions and the information provided to [her] by the 4-H Fair organizers, including expected passenger loads. . . . due to the parking lots being closed, . . . and the need to transport vendors to the fair."

On August 16, 2013, the Association filed a grievance alleging that the County violated the Agreement by using both overtime rotation lists for the 4-H fair.<sup>2/</sup> As a remedy, the Association seeks overtime pay for "all disenfranchised drivers." The County denied the grievance at all levels, and the Association demanded binding grievance arbitration on October 11. This petition ensued.

Our jurisdiction is narrow. We consider the negotiability of this dispute in the abstract. We express no opinion about the contractual merits of the grievance or any contractual defenses the Township may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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

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<sup>2/</sup> The Association is also asserting that the County violated the grievance procedure by violating an arbitration award regarding assigning overtime only to drivers whose regular schedule is completed by 5 p.m.

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 County asserts that there are specific limitations on the negotiability of overtime designed to ensure that the public employer will have a sufficient number of qualified employees to perform certain necessary overtime tasks. It argues that the County anticipated a need to transport more people than usual for the 2013 4-H fair, so as a matter of governmental policy in order to assign the right drivers to each bus, it used both the minibus and motor coach overtime rotation lists when making assignments.

The Association asserts that the County's changes in the selection of drivers from overtime lists for the 4-H fair were mandatorily negotiable. It notes that it does not grieve the County's use of motor coaches to transport more people, but it grieves the change from past practice of making 4-H fair overtime assignments for minibuses and motor coaches exclusively from the minibus drivers' overtime rotation list. The Association argues that there was no emergent situation during the 4-H fair that would have provided the County with a managerial prerogative to unilaterally change the overtime assignment procedures.

It is well-settled that the allocation of overtime is generally mandatorily negotiable and legally arbitrable. Long

Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). The Association asserts that a past practice existed in which the County selected drivers for overtime for the 4-H Fair exclusively from the minibus drivers overtime rotation list, and that since many minibus drivers were also qualified to drive motor coaches, the County was able to rely exclusively upon this list to perform the transportation services. The County does not dispute these assertions. Rather, the County argues that in 2013 it used both lists to allocate overtime due to the need for qualified employees to drive motor buses, and because emergent circumstances existed such as increased passenger loads. However, the record does not support these contentions. The certification of the Transportation Director supports that the increased passenger loads were anticipated several days in advance of the 4-H Fair, and that even the additional assignments that were made on two of the three days of the 4-H Fair were made in advance of the shifts and not under emergent circumstances. The County does not dispute that many of the minibus drivers are also qualified to drive the motor coach buses, and there is no evidence in the record to support that working exclusively from the minibus driver list would have resulted in not having enough qualified drivers to drive the motor coaches. Therefore, the issue of allocation of overtime in this case is mandatorily negotiable and legally arbitrable.

ORDER

The request of the County of Somerset for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: August 14, 2014

Trenton, New Jersey