

P.E.R.C. NO. 2016-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW BRUNSWICK PARKING AUTHORITY,

Petitioner,

-and-

Docket No. SN-2015-074

IBT LOCAL 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the request of the Parking Authority for a restraint of binding arbitration of a grievance filed by the IBT contesting the unilateral change in shift schedules of four unit members. Applying Local 195's balancing test, the Commission finds that the predominate concern with regard to shift changes of two unit members was the attainment of governmental policy objectives, and conversely, with respect to the other two unit members, that the employees' interest in preserving work schedules predominate.

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, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., of counsel and on the brief)

For the Respondent, Levy Ratner, P.C., attorneys (Dana E. Lossia, of counsel and on the brief)

DECISION

On June 4, 2015, the New Brunswick Parking Authority (Authority) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 102 (Local 102). The grievance alleges that the Authority violated the parties' collective negotiations agreement (CNA) and past practice by changing shift schedules, "including any paid lunch period," of unit members.

The Authority has filed briefs, exhibits and the certification of its Director of Operations. Local 102 has filed

briefs, exhibits, and certifications of four members of the unit. These facts appear.

Local 102 represents the Authority's property maintenance and custodial employees. The Authority and Local 102 are parties to a CNA in effect from January 1, 2012 through December 31, 2015. The grievance procedure ends in binding arbitration.

Article 5 of the CNA, entitled "Shift/Hours of Operation," provides in pertinent part:

5.1 The Employer reserves the right to determine shift hours for Maintenance, Custodial and Booth employees assigned by the Property Manager or Operations Manager/Supervisor. The Union recognizes that the NBPA is a 24 hour, 7 days a week operation . . .

5.5 Maintenance Department assignments for shift times, Monday to Friday work week or split work week will be offered on the basis of seniority. Once a shift time, Monday to Friday workweek, or split workweek is selected by a Property Maintenance Employee, they must remain in that selection until another shift time . . . becomes available.

5.6 All current Property Maintenance Department staff (as of 1-1-12) to remain on current shift/times/days unless they successfully bid on another shift. The Employer reserves the right to schedule New Hires on shifts which must be (5) five consecutive days but may include either Saturday or Sunday as part of regular shift but not both . . .

5.8 The lunch period shall consist of one (1) hour to be determined by the Property Manager or Operations Manager.

There are eleven property maintenance employees. Six of them were hired before January 1, 2012. In its brief, the Association clarified that its grievance concerns only four maintenance employees, all hired before January 1, 2012.

The Authority is responsible for public parking and public parking enforcement in the City of New Brunswick. It operates five parking lots and eight parking decks, both open twenty-four hours a day, seven days a week. The Authority also maintains approximately 1,000 parking meters and, through an agreement with the City, provides street cleaning services in the City's downtown area.

The Authority's Director of Operations certifies that its parking facilities are used by commuters who ride trains and buses departing from the New Jersey Transit Station in New Brunswick and by hundreds of Middlesex County employees, County Superior Court employees and jurors, employees and patients of two large area hospitals and their visitors, and employees of private businesses within the City, like Johnson & Johnson, which recently exceeded its on-site parking capacity. He further certifies there has been a resurgence of the City's downtown area, which has substantially increased use of the Authority's parking facilities after the business day, especially on weekends.

The Authority's property maintenance workers perform general maintenance and housekeeping duties, including basic electrical, equipment, and machinery repairs, basic plumbing, snow removal, painting, and meter collection. Maintenance employees also maintain, repair and clean the revenue control equipment, meters, and Authority vehicles and are responsible for the proper operation of the gate-controlled entrances and exits of Authority parking decks and the parking lots' multi-space pay stations.

Prior to the changes at issue here, the Authority had made certain technological upgrades to its facilities and operational changes. These include automating the entrances and exits of the parking decks and eliminating manned booths to allow more efficient ingress and egress. In addition, the Authority outsourced deck sweeping, which previously had been done by property maintenance employees beginning at 4 a.m., before many customers entered the decks.

The Director of Operations certifies that technology has enabled the Authority to gauge when the parking decks and lots are most often used by its customers. According to the Director, car volume on weekdays is generally highest between six and nine in the morning and between three and seven in the evenings except on Friday, when peak afternoon times extend into early morning hours.

In November 2014, the Authority announced its intention to change the work shifts of maintenance and custodial employees and advised them to submit bids for the modified shifts by a certain date. None of the maintenance employees hired before January 1, 2012 submitted bids.

On December 8, 2014, Local 102 filed a grievance challenging the impending changes. On January 2, 2015, the Authority implemented them.

The table below shows the hours, before and after January 2, 2015, of the four maintenance workers who are the subject of the Association's grievance:

Employee	Prior Hours	New Hours
Colon	4 a.m. to 1 p.m.	6 a.m. to 3 p.m.
Cappelluti	4 a.m. to 1 p.m.	6 a.m. to 3 p.m.
DeMarco	8 a.m. to 5 p.m.	6 a.m. to 3 p.m.
Safwat	5 p.m. to 1 a.m.	3 p.m. to midnight

These employees worked Monday through Friday before January 2, 2015. They continue to work Monday through Friday.^{1/}

The 6 a.m. to 3 p.m. weekdays shift went from four maintenance workers, inclusive of a supervisor, to seven, inclusive of a supervisor, as of January 2, 2015.

Prior to that date, four maintenance employees, including a supervisor, worked afternoon/evening hours with staggered

^{1/} Neither party explains why Mr. Safwat went from working an eight-hour shift to a nine-hour shift.

starting times. As of January 2, 2015, these employees' hours were changed to 3 p.m. to midnight. In addition, one maintenance employee who had worked a day shift (9 a.m. to 6 p.m. weekdays) was assigned to a split shift, consisting of 3 p.m. to midnight, Tuesday through Thursday, and 6 p.m. to 3 a.m., Friday and Saturday.

The Authority's Director of Operations explains the reasons for the shift changes, as follows:

Given automation and the elimination of the booth attendants, it was determined that employees were no longer needed to work shifts the same as booth attendants. Moreover, the outsourcing of the deck sweeping function eliminated the need of employees reporting at 4:00 a.m. Further, our volume in the decks and lots demonstrated that we needed more employees to work at 6:00 a.m. Last, there was a desire to coordinate supervisor and subordinate work hours.

The Director also certifies that the changes were made in order to enhance the efficiency of Authority operations, meet the public's demand, provide the most effective employee coverage, and increase supervision, and that the new maintenance schedule accomplishes the following:

- (1) ensures the most direct supervision that the Authority can provide to its employees;
- (2) creates a full compliment of employees on the day shift to ensure adequate coverage during the busiest days and times to handle the volume of traffic before 10:00 a.m.;
- (3) supplements the night shift with more employees when cleaning and maintenance can be done;

- (4) eliminates the 4:00 a.m. shift when the Authority had no supervisor or work for the employees to perform and now allows the supervisor to hand out assignments, supervise the work, and deploy his workforce;
- (5) augments the staffing levels when vehicular traffic flow in and out of the lots and decks is greatest; and
- (6) better groups the employees so that there is more constant supervision.

Local 102 has submitted the certification of each of the four maintenance workers whose schedule changes are the subject of its grievance. These certifications describe the work that they perform; indicate why they believe that their prior shift schedule was more conducive to completing that work and meeting coverage needs during peak hours; dispute the Authority's concern regarding the necessity of additional supervision; and outline the personal inconveniences created by the shift changes.

The Authority denied Local 102's grievance at all steps. On December 29, 2014, Local 102 demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Authority argues that its decision to implement a new shift schedule is an exercise of its managerial prerogative to allocate manpower based on operational needs while also improving supervision and efficiency. Further, the Authority contends that a public employer may not relinquish any of its managerial prerogatives and bind itself in a collective negotiations agreement on subjects that are not mandatorily negotiable.

Local 102 responds that the grievance is arbitrable because negotiating the start times of four maintenance employees does

not significantly interfere with the determination of any governmental policy. Local 102 argues that the Authority has not shown any need to increase supervision or that there is no work that can be done during early morning hours.^{2/}

Applying the first test under Local 195, we find that the Authority's change in working hours intimately and directly affects the work and welfare of the grievants. We have consistently held that the work schedules of individual employees are, as a general rule, mandatorily negotiable, unless the facts prove a particularized need to preserve or change a work schedule to effectuate governmental policy. UMDNJ, P.E.R.C. No. 2014-39, 40 NJPER 282 (¶108 2013) (citing Local 195, IFPTE v. State, 88 N.J. 393, 403 (1982)). Accordingly, Local 195's first test has been satisfied.

Under Local 195's second test, neither party has identified a statute or regulation that fully or partially preempts the issue and we have found none. Accordingly, Local 195's second test has been satisfied.

Turning to Local 195's third prong, we recognize that public employers have a prerogative to determine the hours and days

^{2/} In its reply brief, the Authority argues that its action constituted a non-negotiable reorganization. Local 102 objects to consideration of the argument because it was not expressly raised in the Authority's initial brief. We find it unnecessary to address the Authority's reorganization claim.

during which a service will be operated and to determine the staffing levels at any given time. Passaic County Sheriff's Office, P.E.R.C. No. 2014-56, 40 NJPER 417 (¶140 2014). See also, City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13 1982) (employer has non-negotiable, managerial prerogative to determine the manning levels necessary for the efficient delivery of governmental services). Further, public employers have a prerogative to unilaterally change the shifts of positions or individuals to achieve operational, supervisory or other governmental policy objectives. UMDNJ, 40 NJPER at 282; see, e.g., Irvington PBA Local No. 29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980); City of Millville, P.E.R.C. No. 2003-21, 28 NJPER 418 (¶33153 2002); Borough of Roselle Park, P.E.R.C. No. 2006-43, 31 NJPER 396 (¶157 2005).

Applying Local 195's balancing test, we hold that the decision to eliminate the 4 a.m. to 1 p.m. shift and, when the two employees who had worked those hours declined to bid for other shifts, to transfer them to the 6 a.m. to 3 p.m. shift was a non-negotiable matter of managerial prerogative. The impetus for the decision to eliminate the 4 a.m. to 1 p.m. shift - the outsourcing of deck sweeping - was itself a managerial prerogative akin to subcontracting, an area where managerial interests are dominant. Local 195, supra, 88 N.J. at 407-408.

Coupled with the outsourcing decision was the Authority's policy determination that it needed more maintenance employees to work between 6 and 9 a.m. weekdays, when customer demand for its parking facilities is greatest. Negotiations would substantially interfere with the Authority's right to determine the number of maintenance employees to be on duty during peak hours so as to provide effective public services. Lastly, the net effect of the elimination of the 4 a.m. to 1 p.m. shift and transfer to the 6 a.m. to 3 p.m. shift was a twenty-five percent increase in overlapping hours of the two employees and their supervisor.

As the Court did in Borough of Atlantic Highlands. V. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den., 96 N.J. 293 (1984), we underscore the small size of the property maintenance workforce. We also recognize that as construed by the Association, the CNA requires the Authority to maintain more than half of the maintenance employees on schedules in place as of January 2012 unless the employee bids on another shift. An employer with a larger workforce would likely be able to accommodate such a requirement and still achieve governmental policy objectives.

We turn now to the other two employees at issue. We hold that the decision to change their work hours was mandatorily negotiable. We distinguish their circumstance because the reasons given by the Authority for eliminating the 4 a.m. to 1 p.m. shift and transferring the other two employees to the 6 a.m.

to 3 p.m. shift either do not apply to them or do so to a much lesser extent. The Authority's rationale that it needed to increase manpower between the hours of 6 a.m. and 9 a.m. simply does not apply to the evening maintenance employee hired before January 1, 2012, Safwat, or the day worker who had already been scheduled to work at 8 a.m., DeMarco. Nor has the Authority alleged that the outsourcing of deck sweeping played any part in its decision to change the schedules of these other two employees. As for supervision, the changes to DeMarco's schedule did not increase supervision opportunities, and in Safwat's case, the change only added one hour of additional supervisory overlap. In DeMarco's and Safwat's cases, the Authority's proofs fall short of establishing that its manpower needs or other governmental goals were not being met under the prior schedules. On balance, we find these employees' interest in preserving their schedules to be dominant.^{3/}

^{3/} We also do not restrain arbitration of that aspect of the grievance involving the lunch period inasmuch as the parties did not address it.

ORDER

The request for a restraint of binding arbitration is granted with regard to employees Colon and Cappelluti whose schedules were changed from 4 a.m. - 1 p.m. to 6 a.m. - 3 p.m. and is denied with regard to employees DeMarco and Safwat whose schedules were changed from 8 a.m. - 5 p.m. to 6 a.m. - 3 p.m. and 5 p.m. - 1 a.m. to 3 p.m. - midnight respectively.

BY ORDER OF THE COMMISSION

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

ISSUED: April 28, 2016

Trenton, New Jersey