

P.E.R.C. NO. 2021-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2020-046

IFPTE LOCAL 193C,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Authority's request for a restraint of binding arbitration of Local 193C's grievance contesting the transfers of four Maintenance Supervisors to different maintenance districts during an investigation. The Commission holds that where qualifications are not at issue, a union may arbitrate an involuntary transfer between work sites based on an alleged seniority preference procedure. Finding that Local 193C seeks to arbitrate over alleged procedural violations concerning seniority preference and how far away employees may be involuntarily transferred, and that the Authority has not demonstrated a particularized governmental policy reason for transferring the grievants to the specific districts they were transferred to, the Commission declines to restrain arbitration.

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, Genova Burns, LLC, attorneys
(Douglas E. Soloman, of counsel and on the brief; Eric
D. Engelman, on the brief)

For the Respondent, Mets Schiro & McGovern, attorneys
(James M. Mets, of counsel and on the brief; Brian J.
Manetta, on the brief; Nicholas G. Kiriakatos, on the
brief)

DECISION

On February 27, 2020, the New Jersey Turnpike Authority
(Authority) filed a scope of negotiations petition seeking a
restraint of binding arbitration of a grievance filed by IFPTE
Local 193C (Local 193C). The grievance asserts that the
Authority violated the parties' collective negotiations agreement
(CNA) and past practice when it improperly transferred four
Maintenance Supervisors to new districts.

The Authority filed briefs, exhibits and the certification
of its Director of Maintenance, Kenneth McGoldrick. Local 193C

filed a brief, exhibits, and the certification of one of its grievants, M.P. These facts appear.

Local 193C represents Crew Supervisors, Equipment Trainers, Garage Supervisors, Sign Shop Supervisors and Pavement Marking Supervisors. The Authority and Local 193C were parties to a CNA in effect from July 1, 2007 through June 30, 2011. The Authority and Local 193C are also parties to a Memorandum of Agreement covering the period of July 1, 2011 through June 30, 2019. The grievance procedure ends in binding arbitration.

Article XI(3) of the CNA provides:

Open positions for classifications within the unit that are created by increase in force, termination, resignation, promotion, transfer or any other reason, except for the title of Equipment Trainers, will be filled by the most qualified employee within the affected classification. Open positions will be posted for a period of five (5) days. Open positions will first be offered, except for the Equipment Trainer, as a transfer opportunity to employees on a unit wide basis by seniority. The most qualified employee bidding on the transfer shall fill the position and will be given, if necessary, the opportunity to acquire a Commercial Driver's License while on probation for the new position. For Equipment Trainers, the employee must be certified pursuant to procedures developed by a committee of two union and two management designated representatives, which certification is a prerequisite to transfer to that job.

The four grievants all serve in the position of "Crew Supervisor, Roadway," which the parties sometimes refer to as "Maintenance Supervisor." Crew Supervisors perform the following

duties: assigning maintenance workers to complete daily tasks; ensuring equipment is properly accounted for; and completing and submitting timesheets to clerks to ensure that overtime is equalized. There are eight maintenance districts/yards along the Garden State Parkway where Crew Supervisors are assigned to work. Crew Supervisors perform the same duties regardless of where they are assigned.

On July 3, 2019, the Authority's Superintendent of Roadway Maintenance emailed the grievants a request to attend a meeting at the Ocean Maintenance Yard that day. During that meeting, the grievants were informed that were being temporarily reassigned to other maintenance districts/yards. Effective July 9, 2019, the grievants were temporarily assigned to different districts/yards. Two of the grievants were assigned two districts away from their regular assignments, and two grievants were assigned one district away from their regular assignments.

McGoldrick certifies that the grievants were temporarily reassigned to different districts "so the Authority could investigate complaints made by other Authority employees." He certifies that the investigation is still ongoing.

M.P. certifies that the transfers created four open Crew Supervisor positions that were not offered to unit employees as transfer opportunities based on seniority. He certifies that there is a past practice that when supervisors are involuntarily

transferred they will only be moved one district north or south to avoid excessive travel, provided that the transferred employees all have the same relative qualifications. He also certifies that the transfers adversely affected the grievants' ability to earn overtime compensation.

On August 2, 2019, Local 193C filed a grievance challenging the temporary assignments. The grievance asserts that the Authority transferred the grievants and reduced their overtime opportunities without just cause and without regard to seniority in violation of CNA articles concerning discipline, seniority, and overtime, as well as past practice. As a remedy, the grievance seeks that the Authority return the grievants to their original districts, strike any improper discipline from their records, and make them whole. In its respondent's brief, Local 193C limited its challenge to the transfer procedures governing where the grievants would be transferred, but not the Authority's decision to transfer them outside of their regular work location during the investigation. On August 26, Local 193C filed for binding grievance arbitration.^{1/} This petition ensued.

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

^{1/} On December 9, 2019, Local 193C filed an unfair practice charge related to the temporary transfers, docketed as CO-2020-160.

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 merits of the grievance or any contractual defenses the employer may have.

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 404-405.]

The Authority asserts that the grievance is not arbitrable because requiring reassignments to be based solely on seniority

infringes on the Authority's managerial right to determine which employees to reassign. The Authority asserts that the grievants were temporarily reassigned so that it could properly conduct an ongoing internal investigation. It contends that any limits on how long it can reassign employees or how far away temporary reassignments may be from employees' regular work locations would impermissibly infringe on its managerial right to make substantive reassignment decisions. Finally, the Authority asserts that Local 193C's claim regarding lost overtime opportunities cannot be severed from the substantive decision to reassign and is therefore not arbitrable.

Local 193C asserts the grievance is arbitrable because it challenges transfer procedures, but not the decision to transfer. Local 193C contends that the Authority's reasons for the transfers do not include any claim regarding special qualifications or supervisory objectives that would require them to work in a particular district. It asserts that once the Authority determined it would transfer the grievants out of their regular work locations due to an investigation, there was no managerial or governmental policy objective that would be significantly impeded by adhering to contractual seniority preference or past practices concerning how many districts away they could be transferred.

The substantive decision to transfer or reassign an employee is generally not arbitrable because public employers have a non-negotiable prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195; Ridgefield Park. However, public employers and majority representatives may agree that seniority can be a factor in shift assignments where all qualifications are equal and managerial prerogatives are not otherwise compromised. Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), clarified, P.E.R.C. No. 2000-72, 26 NJPER 172 (¶31069 2000), aff'd, 27 NJPER 357 (¶32128 App. Div. 2001); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd, NJPER Supp.2d 245 (¶204 App. Div. 1990). "The interplay between seniority as a basis for choosing shift assignments and managerial needs as a basis for exceptions to any agreed-upon seniority system must be assessed case-by-case" focusing on "the specific nature of an arbitration dispute given the facts contained in the record and the arguments presented." Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19, 20 (¶30006 1998).

The Supreme Court has specifically found "there can be no question that the determination of where an employee works. . . intimately and directly affects the employee's work and welfare." Local 195 at 393. Therefore, the Commission and Appellate

Division have found that where qualifications are not at issue, a union may arbitrate an involuntary transfer between work sites based on alleged contractual procedures such as a seniority preference. State of New Jersey (Human Services), P.E.R.C. No. 94-108, 20 NJPER 234 (25116 1994), aff'd, 21 NJPER 262 (¶26165 App. Div. 1995).

The Commission has consistently declined to restrain arbitration of grievances alleging deviation from alleged seniority assignment/post bidding systems where the public employer has failed to demonstrate a need for special skills, qualifications, or specific training or supervisory objectives and has not otherwise shown how governmental policy would be significantly impeded. See, e.g., Hudson Cty., P.E.R.C. No. 2019-24, 45 NJPER 219 (¶58 2018) (reassignment from seniority bidded post to Record Room post was arbitrable); City of Trenton, P.E.R.C. No. 2014-18, 40 NJPER 202 (¶77 2013) (reassignment from administration unit to operations unit was arbitrable); Burlington Cty., P.E.R.C. No. 2012-27, 38 NJPER 211 (¶73 2012) (officers reassigned from closed Money Room post could arbitrate over seniority bidding for Control 9 posts); Mercer Cty. Sheriff, supra (officers reassigned from airport posts could arbitrate over seniority preference).

In the instant case, Local 193C does not seek to arbitrate the Authority's decision to temporarily transfer the grievants

from their regular work locations while conducting an investigation. Local 193C seeks to arbitrate over where the grievants were transferred and how the assignments they were transferred out of were made available for reassignment. It alleges violations of contractual transfer procedures based on seniority preference and a past practice concerning how far away an employee may be involuntarily transferred from their regular work location. The Authority asserted a managerial objective for temporarily transferring the grievants out of their regular divisions during ongoing investigations involving allegations from their coworkers. However, the Authority has not suggested any managerial reasons for transferring them to the specific divisions that they were transferred to. The Authority has not asserted or demonstrated that any of the grievants were transferred to specific divisions based on relative qualifications, special skills, or any other operational, training, or supervisory objectives particular to the grievants and the divisions they were relocated to. As the Authority has failed to demonstrate a particularized governmental policy objective that would be significantly impeded by adherence to an alleged agreement or past practice concerning transfer and assignment bidding procedures, Local 193C may seek to enforce its claim through binding arbitration.

ORDER

The request of the New Jersey Turnpike Authority for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: November 12, 2020

Trenton, New Jersey