

P.E.R.C. NO. 99-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT CORPORATION,

Petitioner,

-and-

Docket No. SN-98-83

P.B.A. LOCAL 304,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies New Jersey Transit Corporation's motion for reconsideration of P.E.R.C. No. 99-33. In that case the Commission denied the employer's request for a restraint of binding arbitration of a grievance filed by P.B.A. Local 304. The grievance contests a special order changing schedules and overtime assignments on New Year's Eve, 1998. Since the grievance is proceeding to arbitration over the PBA's compensation claims, the Commission declined to speculate about what contractual rulings the arbitrator may make and what remedies he may order concerning a police employer's right to make scheduling changes for New Year's Day. The Commission finds that NJ Transit has not presented any extraordinary circumstances warranting reconsideration.

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, Peter Verniero, Attorney General
(David S. Griffiths, Deputy Attorney General, on the
brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Joseph Licata, on the brief)

DECISION

On November 13, 1998, New Jersey Transit Corporation moved for reconsideration of P.E.R.C. No. 99-33, 24 NJPER 509 (¶29236 1998). In that decision, we denied the employer's request for a restraint of binding arbitration of a grievance filed by P.B.A. Local 304. The grievance contests a special order changing schedules and overtime assignments on New Year's Eve, 1998. Since the grievance is proceeding to arbitration over the PBA's compensation claims, we declined to speculate about what contractual rulings the arbitrator may make and what remedies he may order concerning a police employer's right to make scheduling changes for New Year's Day. We further stated, however, that if

an arbitrator rejects the employer's contractual defense and issues an award that the employer believes substantially limits governmental policymaking powers, the employer may then assert that the award is illegal in post-arbitration proceedings.

In its motion, the employer asks us to address whether it has a nonnegotiable right to alter the regular schedule of its police officers in order to meet the needs of service of the department on such occasions as New Year's Day and St. Patrick's Day. If management has that right only under certain circumstances, it further asks us to explicate what such circumstances might be.

On November 18, 1998, the PBA filed a response opposing reconsideration. It argues that the employer has failed to articulate how compliance with contractual staffing provisions would substantially limit governmental policymaking powers.

On November 25, 1998, the PBA forwarded a copy of a Superior Court, Chancery Division order confirming an arbitration award that had found that NJ Transit violated the parties' collective negotiations agreement when it changed work schedules for St. Patrick's Day, 1997. The arbitrator ordered NJ Transit to: compensate officers who were involuntarily assigned from one command to another for travel expenses; cease and desist from ordering overtime involuntarily that extends shifts and encroaches on officers' regular days off; and cease and desist from changing the starting times of officers. Applying the balancing test in

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), the confirming Court found that adherence to the officers' negotiated work hours would not have significantly interfered with the employer's managerial prerogative.

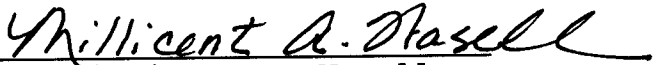
NJ Transit's original scope petition questioned the negotiability of the arbitration award just confirmed by the Superior Court. Since an arbitration award had already issued and the Superior Court had not transferred any negotiability issue concerning that award to the Commission, the Commission Chair held that the Commission would exercise its scope of negotiations jurisdiction only with respect to a separate grievance challenging a New Year's Eve Special Order.

As we said in our original decision, the issue of whether a police employer may deviate from a contractual work schedule provision arose from a grievance arbitration award not before us. That award has been confirmed. Under the circumstances of the case before us, where the grievance would be proceeding to arbitration, we declined to speculate about what contractual rulings the arbitrator might make and what remedies the arbitrator might order. NJ Transit has not presented any extraordinary circumstances warranting reconsideration of that holding.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: December 17, 1998
Trenton, New Jersey
ISSUED: December 18, 1998