P.E.R.C. NO. 87-143

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and- Docket No. SN-87-27

LOCAL 560 IBT,

Respondent.

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and- Docket No. SN-87-28

LABORERS' LOCAL 472,

Respondent.

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and- Docket No. SN-87-48

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 734,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines requests by the New Jersey Sports and Exposition Authority to restrain arbitration of grievances which Local 560, IBT, Laborers' Local 472 and Laborers' International Union Local 734 filed against it. These grievances allege that the authority violated negotiated agreements by depriving senior full-time employees of weekend work hours at overtime rates and instead using junior full-time and/or part-time,

casual or seasonal employees to work on weekends at straight-time rates. The Commission finds that this dispute may be submitted to binding arbitration because it predominantly involves the employees' interests in negotiating hours of work and rates of pay.

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STATE OF NEW JERSEY
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In the Matters of

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and- Docket No. SN-87-27

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 560,

Respondent.

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and- Docket No. SN-87-28

LABORERS' LOCAL 472,

Respondent.

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and- Docket No. SN-87-48

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 734,

Respondent.

Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, Esqs. (M. Joan Foster, of counsel, Mark E. Faber, on the brief)

For the Respondent in SN-87-27, Reitman, Parsonnet, Maisel & Duggan, Esqs. (Tara Levy, of counsel)

For the Respondents in SN-87-28 and SN-87-48, Schneider, Cohen, Solomon, Leder & Montalbano, Esqs. (J. Sheldon Cohen, of counsel in SN-87-28, Bruce D. Leder, of counsel in SN-87-48)

DECISION AND ORDER

On November 14, 1986 and February 10, 1987, the New Jersey Sports & Exposition Authority ("Authority") filed three Petitions for Scope of Negotiations Determination. The petitions seek to restrain arbitration of grievances which International Brotherhood of Teamsters, Local 560 ("Local 560") (SN-87-27), Laborers' Local 472 ("Local 472") (SN-87-28) and Laborers' International Union Local 734 ("Local 734") (SN-87-48) have filed.[1/]

All parties have filed briefs, reply briefs, affidavits and documents. We do not consider the merits of the grievances or the merits of any contract defenses. Our jurisdiction is limited to determining whether the grievances involve mandatorily negotiable subjects. The following facts appear.

Local 560 represents a unit of operators of trucks, tractors, ambulances and other motorized vehicles and equipment used in the Authority's operations at the the Meadowlands Racetrack, the Brendan Byrne Arena and Giants Stadium. The Authority and Local

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1/ Local 734 also filed an unfair practice charge against the Authority alleging that similar conduct of the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5). On March 11, 1987 the Director of Unfair Practices issued a Complaint and Notice of Hearing regarding the charge and the Chairman issued a Notice of Hearing regarding the Scope Petition. The Chairman also consolidated the two cases for hearing purposes. Because all three scope petitions present similar legal issues, the Chairman later transferred SN-87-48 to the Commission for consideration with SN-87-27 and SN-87-28.

560 are parties to a collective negotiations agreement covering December 1, 1982 to November 30, 1986.

Local 472 represents a unit of maintenance laborers. The Authority and Local 472 are parties to a collective negotiations agreement covering November 30, 1985 to December 1, 1988.

Local 734 represents all full and part-time building maintenance cleaning employees, restroom attendants and stock clerks at the racetrack, arena and stadium. The Authority and Local 734 are parties to a collective negotiations agreement covering December 1, 1985 to November 30, 1988.

All contracts contain grievance procedures which culminate in binding arbitration.

All grievances allege that the Authority, beginning in July 1986, violated negotiated agreements by depriving senior full-time employees of weekend work hours at overtime rates and instead using junior full-time and/or part-time, casual or seasonal employees to work on weekends at straight time rates. 2/ The circumstances involving each union are different and will be discussed separately.

2/ Local 560 alleges that some regular and casual part-time employees received overtime, rather than straight time, for a portion of their weekend work. The Authority responds that to the extent the grievances challenge the allocation of work actually paid at overtime rates, it does not seek to restrain that aspect of the grievances. The Authority seeks to restrain the grievances which allege that full-time employees should have been assigned the weekend work at overtime rates instead of using other employees at straight time.

Local 560

The Authority employs these classes of employees represented by Local 560 and paid the wages and benefits set forth in the negotiated agreement: (1) regular, full-time employees who have completed a 30-day probationary period and who work more than 1040 hours per year; (2) regular part-time employees who work one or two days a week or as needed and have experience at the Meadowlands, and (3) casual employees hired as needed from Local 560's hiring hall. Regular, full-time employees are listed on a permanent seniority list, while the part-timers with prior experience appear on an informal, auxiliary seniority list. No seniority exists for hiring hall employees.

From the opening of the Meadowlands in 1976 until July 1986, weekend work was offered at overtime rates to regular full-time employees with the highest seniority who had already worked 40 hours at straight time. The overtime was offered even where some regular employees had not worked 40 hours that particular week. Contracts in effect up to the most recent one guaranteed regular full-time employees a workweek of 48 hours composed of 40 hours, paid at straight time rates, and eight hours, paid at overtime rates. During the most recent agreement, the minimum workweek guarantee decreased to 46 hours in the second year, 44 hours in the third year, 42 hours in the first nine months of the fourth year and 40 hours effective September 1, 1986. The union

contends that the quid pro quo for the reduction in guaranteed workweek was that the overtime opportunities for full-time employees would not be reduced.

During the spring of 1986, a budget review revealed that revenue from the Meadowlands racetrack had dropped sharply. The Authority directed its department heads to cut expenses and to eliminate unnecessary overtime. In July 1986, the Backstretch and Track Manager, John Chevalier, began to allocate weekend work in this order: 1) regular employees on the active seniority list who had not yet worked 40 hours that particular week; 2) part-time employees appearing on the auxiliary seniority list, and 3) workers from Local 560's hiring hall. Straight time rates were paid for this work. Remaining work was allocated by seniority to regular full-time employees and paid at overtime rates.

Following the weekend of July 5 and 6, 1986, 18 grievances were filed on behalf of Local 560 employees claiming they were denied the opportunity for weekend work at overtime rates. A similar number of grievances were filed after the next weekend, at which point the Authority's Director of Labor Relations advised Local 560 that it was unnecessary to file more grievances.

The grievances allege that the Authority violated these contract provisions:

> Article 3. Hours of Work and Overtime
>
> Section 2. All hours worked in excess of eight (8) hours per day and forty (40) hours in a work

week shall be considered overtime and be paid for at the rate on one and one-half (1 1/2) times the employees regular hourly rate.

Section 7. Overtime shall be distributed among all employees according to seniority.

Article 6. Force Reduction

Section 1. The Employer agrees that he will not engage any new employee in the bargaining unit unless all of the employees regularly employed on a full-time basis by the employer are working at least forty (40) hours per week. This provision shall apply only if said employees are capable of performing the work assigned by the Employer.

Article 18. Miscellaneous Working Conditions

Section 7. All vacancies or new jobs shall be first offered to the employees hired at the time, according to seniority before new employees are hired.

Local 472

The Authority's dispute with Local 472 involves only one weekend and grievances filed on behalf of two employees. The background is similar to the dispute with Local 560. In the unit represented by Local 472, regular employees are those who have completed a 60-day probationary period and who work in excess of 1040 hours per year. Also in the unit are "temporary" and "seasonal" employees hired during the racing seasons. The temporary and seasonal employees are paid the same rates as the regulars and receive some of the same benefits (depending in part on their total hours per year), but do not have any seniority rights.

The racetrack operates six days per week. Before July 1986, the Authority called in about five regulars each Saturday to

perform maintenance work on the backstretch. Since these employees had worked Monday through Friday, the Saturday work was almost always overtime and was so compensated. As only the regular employees had seniority rights, they worked the weekend hours and received overtime pay.[3/] Even after July 1986, most of the Saturday work continued to be performed by regulars paid overtime since the Authority needed laborers familiar with its operations. However, on Saturday, September 13, 1986, two seasonals who had worked only 32 hours during the week were called in to work and were paid straight time. A grievance was filed on behalf of two regulars alleging that they should have received these work hours and been paid overtime. It alleged violations of these contract provisions:

> Article 3. Hours of Work and Overtime
>
> Section 2. All hours worked in excess of eight (8) hours per day and forty (40) hours in a work week shall be considered overtime and be paid for at the rate on one and one-half (1 1/2) times the employees regular hourly rate.
>
> Section 6. Overtime shall be distributed among all regular employees by rotation according to seniority within a classification.

3/ Regular employees have traditionally been given more work hours per week then seasonals. A July 1979 memorandum from the Director of Labor Relations to supervisors advised that where a seasonal put in more hours in a week than a regular, the supervisor should see that "the 'short-changed' regular is made whole as soon as possible." In 1982, an arbitrator sustained a union grievance which complained when a temporary employee was called in to work straight time in lieu of a regular employee who should have been called in to work overtime.

Article 5. Seniority

Section 5. Seasonal or temporary employees shall not have any seniority rights under the terms of this agreement. However, such seasonal or temporary employees shall be entitled to all other benefits of the agreement except paid holidays, paid vacations (unless earned during the previous calendar year), sick days, bereavement and jury duty pay.

Local 734[4/]

This dispute involves two grievance arbitrations. One case, involving the racetrack, is similar to the disputes with Local 560 and Local 472. The other involves work at the arena and stadium. These articles are relevant to the grievances:

Article 3, Section 2

All hours worked in excess of eight (8) hours per day or forty (40) hours in a work week shall be paid for at the rate of one and one-half (1-1/2) times the employees regular hourly rate. There shall be no pyramiding of overtime or premium pay.

Article 6, Section 6

The Employer agrees that he will not engage any new employees in the bargaining unit unless all of the employees regularly employed on a full time basis by the Employer are working at least forty (40) hours per week. This provision shall apply only if said employees are capable of performing the work desired.

4/ Hearings were held in the combined scope and unfair practice cases involving Local 734 on April 2 and 10, 1987. The transcript from April 2 will be referred to as "TA" and the transcript from April 10 will be referred to as "TB".

Article 7, Section 3 provides for separate seniority lists for full-time employees at the racetrack, arena and stadium; Section 4 provides that layoffs and recalls (of full-time employees) at the three locations shall be in accordance with an employee's individual seniority at the specific location.

The Racetrack

Local 734 represents cleaners responsible for cleaning all areas in and around the grandstand, including the standee floor, clubhouse floors, clubhouse, handicapped dining room and Pegasus Restaurant. The Authority uses full-time and both regular and "as-needed" part-time employees, all of whom are represented by Local 734. Full-time employees are listed on a seniority roster. An informal list is maintained for part-timers.

The racetrack normally operates six days per week, Monday through Saturday (TB13). Before August 1986, full-time cleaners worked the same six days per week, Monday through Saturday. Monday through Friday was their regular 40-hour week, and Saturday work hours were paid at overtime (TA10). Before August 1986, part-time employees were not regularly used at the racetrack (TB45).

On Saturdays, August 16 and 23, 1986, instead of using all full-time employees on overtime, the Authority used part-time employees on straight time and some full-time employees on overtime (TA11-12). On August 18, 1986 Local 734 filed a grievance (Exhibit

J-3A) on behalf of full-time cleaners who were not allowed to work that day and any succeeding Saturday.[5/] Local 734 sought reimbursement for those employees who lost pay. That grievance was denied by the Authority, prompting Local 734 to file for arbitration.

The Stadium and Arena Grievance

The Authority employs both full-time and regular and "as-needed" part-time employees at the stadium and arena for cleaning and maintenance before, during, and after events. The regular workweek and days off varied from week to week depending on scheduled events (TB136-138, TB147, TB154, TB171). Before July 1986, when a sixth day of work was available at the stadium, full-time employees worked overtime (TB135-136, TB141-142). At the stadium, a number of full-time workers are scheduled to work during events (TB143). At the arena, only part-time employees normally work during events (TB163-165). The full-timers at the arena have worked overtime on occasion.

5/ The Authority later made two changes which affected the full-time employees' weekend work hours. From September 1986 through December 1986, it permitted full-time employees to volunteer to work Saturdays (TA12, TB29). In January 1987, it placed limits on the number of full-time employees who could volunteer to work on Saturdays (TA12-13; TB93-94).

Both the stadium and the arena had events scheduled for Sunday, July 6, 1986, and "dress rehearsals" of the events scheduled for Saturday July 5, 1986.[6/] Full-timers at the stadium who had worked 40 hours on the previous Monday through Friday were given a choice of working either Saturday or Sunday at overtime rates (TB130-131). The remaining weekend work hours were given to part-timers who had worked less than 40 hours at straight time (TB131, TB144-145).

On July 7, 1986, members of Local 734 filed a grievance alleging that full-timers should have been called in to work the Saturday dress rehearsal at the stadium. The full-timers wanted the option to work both Saturday and Sunday at overtime rates (TB140). The grievance was denied by the Authority and Local 734 filed for arbitration.

At the arena, there was no overtime offered to the full-timers for the same weekend (TB167-168). The July 6, 1986 event was scheduled to be worked by the part-timers and part-timers were also assigned to work the July 5, 1986 dress rehearsal (TB155, TB168-169). Full-time employees had put in 40 work hours during the preceding Monday through Friday.

On Saturday, July 5, 1986, Local 734 filed a grievance alleging that the Saturday rehearsal was not an "event" and should

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6/ The events were part of the Statue of Liberty celebrations during the Fourth of July weekend.

have been offered to full-time employees. The Authority denied the grievance and Local 734 filed for arbitration. This grievance was combined with the stadium grievance for arbitration.

The Authority, citing Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14074 1983) and City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982), argues that it exercised its managerial prerogative to determine whether overtime work is necessary. It also contends that since public employers generally have the non-negotiable managerial right to decrease their workforces, it may increase its workforce by using casual employees from the union's hiring hall for weekend work. In its briefs on the Local 560 dispute, the Authority asserts that it made a policy decision to use part-timers more frequently to increase their familiarity with track operations.7/

The unions contend that the issue simply involves which unit employees will work on weekends, given that the employer has decided such work must be performed, and what rate of pay they will

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7/ It also characterizes its former practice of paying the most senior full-time employees overtime rates to do this work as a policy decision prompted by the need to use the most experienced employees in the early years of the racetrack's operations. This argument is made, cursorily, with respect to Local 472's grievance, presumably because the Authority has asserted that it still needs to use regular full-time employees because of their familiarity with track operations. It is not raised in its Local 734 brief. There is no contention with respect to any union that the workers who have filed grievances are not capable of performing the weekend work.

receive. They distinguish Long Branch and Harrison on the grounds that those cases involved decisions not to have work performed at all and add that Long Branch held that allocation of overtime work was mandatorily negotiable. In response to the Authority's contention that overtime allocation is not at issue because it is paying straight time rates to the workers who have displaced the senior, regular employees, the unions cite Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), aff'd. App. Div. Dkt. No. A-3651-78 (7/1/80) ("Rutgers I"), holding that the shifting of work from one group of unit employees to another group of non-unit employees in order to pay straight time rather than overtime was mandatorily negotiable. See also Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83) ("Rutgers II").

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

> 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]

Local 560 essentially contends that the Authority has contractually promised regular senior employees a workweek of: (1) forty hours at straight time and, if weekend work needs to be done, (2) eight more hours at overtime pay. The Authority claims that the most recent contract took away these employees' right to a 48 hour workweek and empowered it to allocate weekend work hours to other employees at straight time. The other unions similarly contend that the employees had a contractual right, based on contract language and past practice, to have certain work hours allocated to them and to be paid overtime if their weekly work hours exceeded 40. The Authority claims that no such contractual right exists and that it instead has a contractual right to allocate the weekend work hours in dispute as it sees fit. We, of course, do not decide any of these contractual disputes and limit ourselves to determining whether the unions' versions of the contracts present mandatorily negotiable and arbitrable issues.

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 403-404]

The Authority does not claim and we do not find that any statute or regulation preempts negotiation. Applying Local 195's balancing test, we hold that the dispute predominantly involves the employees' interests in negotiating hours of work and rates of pay and is mandatorily negotiable.

Our Supreme Court has always held that rates of pay and work hours are the most fundamental terms and conditions of employment. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 8-9 (1973); Burlington Cty. Coll. Faculty Ass'n v. Bd. of Trustees, 64 N.J. 9 (1973); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589 (1980); Local 195. In Woodstown-Pilesgrove, the Court stressed the legislative policy favoring a viable bargaining process in order to produce stability and efficiency and concluded this policy was preeminent when the condition of employment was significantly tied to the equation between the number of days worked and the amount of pay received. In Local 195, the Court held that given the employer's right to determine such questions as when when its services would be offered, staffing levels and employee qualifications, the subject of individual work schedules was mandatorily negotiable.

Local 560 claims that when it negotiated the most recent agreement, the Authority, in exchange for changes in contract language, promised that regular full-time employees would have at least 40 hours of work at straight time pay rates and, if there were additional weekend work hours to be allocated, would receive these hours of weekend work at overtime pay rates. The other unions make similar contractual claims concerning weekend work hours and overtime compensation. Again, the merits of these claims are irrelevant and we must view the grievances abstractly to see how directly and intimately the subject affects the employees' work and welfare and how intrusive the subject may be on governmental policymaking. So viewed, these grievances present the issues which the Supreme Court has located at the heart of the collective negotiations process: rates of pay, hours of work and work schedules. In sum, the central equation of the negotiations process is at issue: how many hours or days will employees work and how much compensation will they receive in return? There were negotiations over this equation and it is for an arbitrator to decide how it was resolved in each instance.

Viewing the Authority's interests, we do not find interference significant enough to preclude arbitration of the unions' breach of contract claims. Local 195 at 404. The Authority retains the sole right to determine when its services will be offered, what work must be done, how many employees are needed to

staff its operations, and what qualifications an employee must possess in order to work. The Authority's reliance on Long Branch and Harrison is misplaced because there we held that the employer could determine that no extra hours of work would be required while here the Authority has determined in its sole discretion that some extra hours of weekend work by the same number of employees as had always done this work must be done. The first question is which employees will work these extra work hours and here there is no dispute that the regular full-time employees who normally perform such tasks are fully qualified to work these weekend hours as well.[8/] The second question is what rate employees will be paid for working these weekend hours. That question is wholly economic and indeed is what triggered these grievances. The Authority may have legitimate budgetary concerns about that question, but such concerns do not make this rate of pay issue non-negotiable in the abstract. Woodstown-Pilesgrove at 594; Piscataway Tp. Bd. of Ed. v. Piscataway Principals Ass'n, 164 N.J. Super. 98, 101 (App. Div. 1978); Rutgers I and II; Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664081T3 (4/28/83);

8/ With respect to the Local 560 grievances, the Authority asserts that it wants to have more workers with experience in its operations. This rationale applies to hiring hall employees only since the other full-time employees (who had not reached 40 hours in a week) and part-time employees used on weekends are already regularly employed or have racetrack experience. We also note that when the changes were made, budgetary reasons were the sole ones advanced. Under all the circumstances of this case, we do not believe this reason outweighs the employees' interest in negotiating over weekend work hours and rates of pay.

Park Ridge Bor., P.E.R.C. No. 87-55, 12 NJPER 851 (¶17328 1986); State of New Jersey, P.E.R.C. No. 86-139, 12 NJPER 484 (¶17185 1986); Moorestown Tp., P.E.R.C. No. 84-122, 10 NJPER 268 (¶15132 1984).

Accordingly, having fully considered and balanced the interests of the Authority and its employees, we conclude that the legislative policy favoring negotiations over economic issues predominates and permits an arbitrator to determine whether the unions' contractual claims do or do not have merit.

ORDER

The requests of the New Jersey Sports & Exposition Authority for restraints of binding arbitration of grievances filed by Local 560, Local 472 and Local 734 are denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Smith and Wenzler voted in favor of this decision. Commissioner Reid was opposed.

DATED: Trenton, New Jersey
May 20, 1987
ISSUED: May 21, 1987