

P.E.R.C. NO. 98-161

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF JEFFERSON,

Petitioner,

-and-

Docket No. SN-98-59

INTERNATIONAL UNION OF PRODUCTION,  
CLERICAL AND PUBLIC EMPLOYEES,  
LOCAL 911,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Jefferson for a restraint of binding arbitration of a grievance filed by the International Union of Production, Clerical and Public Employees, Local 911. The grievance alleges that the Township violated past practices when it did not make an overtime assignment in accordance with a seniority list. The Commission states that the Township would have had a prerogative to deviate from that list if its assignment of the less senior employee rather than another employee was necessary to meet the deadline for installing a new telephone system. But Local 911 has raised a factual dispute concerning the nature of the overtime assignment and whether other more senior employees could have performed the work on time. The Commission permits the arbitrator to consider that factual dispute initially as well as the parties' contractual claims and disputes. The Commission retains jurisdiction to reassess the employer's managerial prerogative defense in the event the arbitrator finds a contractual violation.

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, Courter, Kobert, Laufer, Cohen, P.C.,  
attorneys (Charlene M. Arrington, on the brief)

For the Respondent, Schneider, Goldberger, Cohen, Finn,  
Solomon, Leder & Montalbano, P.C., attorneys  
(James M. Mets, on the brief)

DECISION

On January 23, 1998, the Township of Jefferson petitioned for a scope of negotiations determination. The petition seeks a restraint of binding arbitration of a grievance filed by the International Union of Production, Clerical and Public Employees, Local 911. The grievance alleges that the Township violated past practices when it did not make overtime assignments in accordance with a seniority list.

The parties have filed briefs, exhibits and certifications. These facts appear.

Local 911 represents the Township's non-supervisory employees in these titles: truck driver, heavy equipment

operator, equipment operator, senior maintenance repair/mason, laborer, mechanics worker, recreation maintenance worker, senior mechanic repair/mason, mechanic repairman, animal warden/pound keeper, building service worker, laborer and other employees in the Department of Utilities. These employees were previously represented by the New Jersey Civil Service Association, Morris Council 6. An agreement between the Township and Council 6 was effective from January 1, 1994 through December 31, 1996 and remained in effect until Local 911 and the Township reached agreement on a contract effective from November 1, 1997 through October 31, 2000. The grievance procedure ends in binding arbitration.

The Township contracted with Lucent Technologies for a new telephone system. That contract required the Township to complete all wiring and related work before the scheduled October 14, 1997 installation date. If the Township did not do so, installation would be delayed until November 1, 1997. The current telephone system was scheduled to be disconnected on October 14, 1997 and, if the new system could not be installed that same day, police services and other Township operations would be disrupted.

On Tuesday, October 7, Kenneth Ryan -- the Township's Electrical Subcode Official, Code Enforcement Officer/Building Inspector -- began preparing for the installation. He was assisted by Gino Recksiek, a laborer employed in the Department of Public Works. The Township asserts that Recksiek was selected

because of his knowledge of electrical wiring and tools needed to complete preparations. According to Ryan, Recksiek was assigned to: (1) cut down color-coded cable; (2) remove cable, relays and the archaic telephone key system; (3) install new lighting; (4) install redundant ground electrical cables, and (5) assist the Bell Atlantic fiberglass crew in installing fiberglass in galvanized conduits.

Recksiek worked on the project from Tuesday, October 7 through Saturday, October 11. When the project was not completed on the 11th, Ryan requested that Recksiek continue to work with him on Sunday, October 12 and Monday, October 13, Columbus Day, so that the project would be finished by the October 14 installation deadline. Ryan asserts that if Recksiek did not continue on the project, time would have been lost and the October 14 deadline jeopardized because another employee would have had to be trained to do the work and Ryan would have had to oversee the work.

On October 14, 1997, Local 911 filed two grievances alleging that the past practice of assigning overtime pursuant to a seniority list had been violated on October 12 and 13, 1997. On November 10, Local 911 demanded arbitration. This petition ensued.

Local 911 asserts that for more than fifteen years, overtime assignments have been offered by seniority on a rotating basis. Recksiek is the employee with the least seniority. Based on a certification filed by its shop steward Lou Tarascio, Local 911 further asserts that the overtime assignment included digging

a trench, laying plastic pipe, and placing pre-packaged wire through the plastic pipe. Tarascio asserts that these duties are routinely performed by all unit members and it would have taken little time to familiarize another employee with the tasks to be completed.

The Township contends that it has a right under the parties' agreement to assign the overtime to Recksiek. It maintains that there is a past practice of allowing an employee who has started a job to work overtime hours if the work cannot be finished during the normal shift. The Township also asserts that certain employees are informally assigned areas of responsibility and that the assignment of Recksiek, who normally works at the municipal building, was consistent with its informal practice of giving employees extra work needed in their job locations. A certification filed by the public works director asserts that during this assignment, Recksiek's duties included "making electrical connections and rerouting cable for the telephone system in color coded telephone wire...." The director denies that Recksiek performed "laborer" duties of digging trenches, laying pipe and pushing pre-packaged wire through the pipe and adds that Tarascio knew that Recksiek did not perform such duties and that Tarascio had no first-hand knowledge of what duties Recksiek did perform.

Local 911 seeks an evidentiary hearing. It contends that no special skills were required to complete the installation

preparation and that any member of the unit could have performed the routine tasks assigned. The Township contends that the employee had to possess special skills to assist the subcode official. Local 911 asserts that the scope of negotiability turns on the factual dispute as to whether special skills were required to perform the overtime duties.

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 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 contractual merits of this grievance or any contractual defenses the parties may have.

The allocation of overtime opportunities among qualified employees is a mandatorily negotiable subject. Wayne Tp., P.E.R.C. No. 97-74, 23 NJPER 42 (¶28029 1996), aff'd 24 NJPER 141 (¶29071 App. Div. 1998); New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); see also Town of West New York, P.E.R.C. No. 91-52, 17 NJPER 5 (¶22003 1990), aff'd NJPER

Supp.2d 262 (¶217 App. Div. 1991). But an employer has a prerogative to make assignments necessary to protect the public interest. Long Branch at 450. Also, if an employer needs a particular employee with special skills and qualifications to perform a specific overtime task, it may select that individual to work the overtime and thus insure that its needs are met. City of Camden, P.E.R.C. No. 94-63, 20 NJPER 50 (¶25017 1993). And the fact that an employee who is given the assignment may hold the same job classification or rank as employees who were allegedly passed over for the assignment does not necessarily mean that special skills were not a factor. See, e.g., New Jersey Transit Corp., P.E.R.C. No. 97-127, 23 NJPER 304 (¶28139 1997); City of Elizabeth, P.E.R.C. No. 97-115, 23 NJPER 234 (¶28112 1997).

The employer had a prerogative to contract with Lucent Technologies and to establish and meet an October 14 installation deadline. The Township asserts that it was necessary for several reasons -- including Recksiek's electrical skills and familiarity with the project -- to assign Recksiek to finish the project and that the deadline could not have been met if he wasn't assigned to do that work on Sunday, October 12 and Monday, October 13. If that is the case, it would have had a prerogative under the special circumstances of this case to deviate from any negotiated seniority system. Local 911, however, has raised a factual dispute about the nature of the assignment given to Recksiek and whether other employees with more seniority were skilled enough

and familiar enough with that work to meet the deadline. We will permit the arbitrator to consider the factual claims initially, as well as the contractual claims and defenses raised by both parties.

We will, however, retain jurisdiction to reassess the employer's managerial prerogative defense in the event the arbitrator finds a contractual violation. If necessary, we will specifically review any arbitral finding as to (1) whether Recksiek performed the duties described in the Township's certifications, and (2) whether another member of the negotiations unit, with a higher priority for overtime than Recksiek, was qualified to perform such work. If the record shows that special skills were involved in the Township's decision to give the work to Recksiek or that another employee could not have been substituted for Recksiek without jeopardizing the deadline, we would restrain Local 911 from seeking to have the award implemented. We would thus ultimately determine the facts necessary to issue a scope of negotiations determination. Moreover, proceeding in this manner is consistent with our policy of deferral to arbitration in unfair practice cases. Cf. State of New Jersey v. Council of N.J. State Coll. Locals, NJSFT/AFT, 153 N.J. Super. 91, 92-93 (App. Div. 1977), certif. den. 78 N.J. 326 (1978).



ORDER

The request of Jefferson Township for a restraint of binding arbitration is denied. Jurisdiction is retained so that if the arbitrator finds a contractual violation of an overtime allocation system, this Commission may determine whether the Township had a managerial prerogative to deviate from that system.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. Commissioner Boose voted against this decision. Commissioner Wenzler was not present.

DATED: June 25, 1998  
Trenton, New Jersey  
ISSUED: June 26, 1998