

P.E.R.C. NO. 95-114

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY
(GARDEN STATE ARTS CENTER),

Petitioner,

-and-

Docket No. SN-95-33

THEATRICAL TEAMSTERS LOCAL 817,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
& HELPERS OF AMERICA, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restraint binding arbitration of a claim filed by Theatrical Teamsters Local 817, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO against the New Jersey Highway Authority (Garden State Arts Center). The union seeks to arbitrate a claim that the employer has failed to pay employees their wages and benefits in accordance with the contract. The Commission finds that the dominant issue is compensation and the grievance can legally be resolved through binding 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, Apruzzese, McDermott, Maestro &
Murphy, attorneys (Maurice J. Nelligan, of counsel)

For the Respondent, Friedman & Levine, attorneys
(Bruce S. Levine, of counsel)

DECISION AND ORDER

On October 19, 1994, the New Jersey Highway Authority
(Garden State Arts Center) petitioned for a scope of negotiations
determination. The Authority seeks a restraint of binding
arbitration initiated by Theatrical Teamsters Local 817,
International Brotherhood of Teamsters, Chauffeurs, Warehousemen &
Helpers of America, AFL-CIO. The union seeks to arbitrate a claim
that the employer has failed to pay employees their wages and
benefits in accordance with the contract.

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

Local 817 represents a unit of teamsters employed at the Garden State Arts Center Ampitheater for theatrical shows.^{1/} The parties entered into a collective negotiations agreement effective from February 1, 1992 to January 31, 1995. The contract provides that either party may submit an unresolved grievance to binding arbitration.

Article VII provides that all teamsters will be hired through the union's hiring hall, subject to the Authority's approval. Article III sets the hours and daily rates of pay. Teamsters work separate calls as defined in the contract. For loading and unloading trucks before and after performances, they work up to seven hours on weekdays (with one hour off for lunch) and up to five hours on Saturdays, Sundays and holidays. Daily pay rates per call are higher for work commencing after 4:00 p.m. and on Saturdays, Sundays, or holidays. Article VI, entitled "Basic Crew," provides that a specific number of teamsters will report to perform different tasks. This scheme is set forth in the contract as follows:

The size of the crew required is as follows:

- | | |
|---------------------------------|-------|
| 1. Straight truck (non-trailer) | 2 men |
| 2. First trailer | 3 men |
| 3. Second trailer | 2 men |
| 4. Third trailer | 3 men |

^{1/} The recognition agreement does not apply to non-theatrical events, Cultural Fund Shows and Heritage Festivals.

- 5. Fourth trailer 2 men
- 6. Fifth trailer 3 men
- 7. Each trailer in excess of five trailers 2 men each
- 8. Half-trailer 2 men
- 9. Straight truck, half-loaded 1 man
- 10. Bus with loaded bay 1 man
- 11. Equipment van 1 man
- 12. Single mini-van 0 men
- 13. One trailer, double deck loaded 1 additional man^{2/}

Should the act utilize the services of its own teamsters for unloading trucks or should the act not utilize trucks or trailers, the Authority need not hire any men under this Agreement.

During the summer of 1994, the Authority requested teamsters to load or unload trucks for an Arts Center event. Local 817 referred 19 workers, the number called for by the contractual agreement. When the workers appeared, the Authority concluded that the task could be performed by 16 workers instead of the 19 required by the agreement. Three workers were sent back to the union hall. The three employees were not paid for their appearance or for their time at the Arts Center. It is this failure to pay these three employees which is the basis for the union's grievance.

^{2/} These numbers were revised for the 1992-95 agreement.

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.

We thus cannot consider the contractual arbitrability or merits of the union's claim.

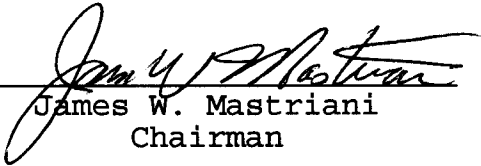
The Authority contends that the number of employees needed to provide a service is normally a matter of managerial prerogative. See, e.g., New Jersey Sports & Exposition Auth., P.E.R.C. No. 90-62, 16 NJPER 46 (121022 1989). But this particular grievance does not implicate staffing levels.^{3/} This dispute is limited only to whether three employees who, upon request, reported for work but did not work, are entitled to be paid. Thus, the dominant issue is compensation and this grievance can legally be resolved through binding arbitration. See Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); see also Hardin, The Developing Labor Law, at 1401 (1992).

^{3/} The Authority's position on staffing may be renewed, without prejudice, should such a dispute arise.

ORDER

The request of the New Jersey Highway Authority (Garden State Arts Center) for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: June 12, 1995
Trenton, New Jersey
ISSUED: June 13, 1995