

P.E.R.C. NO. 2002-79

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAHWAY VALLEY SEWERAGE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2002-30

PAPER, ALLIED-INDUSTRIAL, CHEMICAL
AND ENERGY WORKERS INTERNATIONAL
UNION, LOCAL 2-149,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Rahway Valley Sewerage Authority for a restraint of binding arbitration of a grievance filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-149. The grievance contests an employee's temporary assignment to out-of-title work on a different shift. The Commission concludes that the employees' interests in not having to perform work outside their job description and title, their interest in working their normal negotiated hours of work, and their interest in negotiating over the allocation of work hours and overtime pay opportunities outweigh the employer's interests.

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, DeCotiis, Fitzpatrick, Gluck & Cole,
LLP, attorneys (Richard M. Salsberg and Avis Bishop-
Thompson, on the brief)

For the Respondent, McDonough, Kiernan & Campbell,
attorneys (Kevin M. Kiernan, on the brief)

DECISION

On February 4, 2002, the Rahway Valley Sewerage Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of a grievance filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 2-149 (PACE). The grievance contests an employee's temporary assignment to out-of-title work on a different shift.

The parties have filed briefs and exhibits. The Authority has submitted the certification of its assistant director, Andrew L. Doyle. These facts appear.

PACE represents all regular and full-time, blue collar hourly employees. The parties' collective negotiations agreement is effective from July 1, 1998 through June 30, 2002. The grievance procedure ends in binding arbitration.

Article XXI is entitled Hours of Work. Sections A and B apply to employees who do not work rotating shifts; their normal work week is Monday through Friday and their normal work hours are 7:00 a.m. to 3:00 p.m. Section C states that other employees shall work five days as well and shall rotate between these three shifts: 10:30 p.m. to 6:30 a.m.; 6:30 a.m. to 2:30 p.m.; and 2:30 p.m. to 10:30 p.m. The Authority operates all seven days of the week.

On May 15, 2001, the Authority reviewed the work schedules of all three shifts for June 2001. A Process Operator I named Schippe works the 6:30 a.m. to 2:30 p.m. shift. He was scheduled to be on vacation on Friday, June 29.

The Authority needed to replace Schippe on that shift. On May 15, 2001, it temporarily transferred David Patrick to the shift as a Process Operator I. Patrick normally works from 7:00 a.m. to 3:00 p.m., Mondays through Fridays. According to the Authority, Patrick is a trained and qualified operator for the Process Operator I position even though he holds a maintenance title. According to PACE, another employee holding a Process Operator I title could have been called in on overtime to replace Schippe. The pay rate for Patrick's maintenance title and Schippe's title is the same.

On May 17, 2001, PACE filed a grievance claiming that the Authority violated a contract article governing temporary transfers. The Authority then issued a "shift change" form changing Patrick's shift to fill the Process Operator I vacancy on June 29.

On September 12, 2001, Doyle denied the grievance. He stated that the Authority had an inherent managerial right and express contractual right to reassign Patrick to work as a Process Operator I.

On October 5, 2001, PACE's president asked Doyle to reconsider. He wrote that the agreement does not allow for the transfer of an employee from a maintenance position to a Process Operator I position; Patrick was the only Monday through Friday day shift employee ever to be issued a "shift change" form; and shift change provisions apply only to shift employees.

PACE demanded arbitration and this petition ensued.

Our scope of negotiations jurisdiction is narrow.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the employer may have.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a subject is mandatorily negotiable and a dispute is legally arbitrable if:

(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. [Id. at 404-405]

The parties' interests must be balanced in light of the issues and facts presented by each case. Jersey City v. Jersey City, POBA, 154 N.J. 555 (1998).

The Authority argues that it has a managerial prerogative to change shifts and temporarily assign employees to meet operational needs. PACE argues that the assignment of duties outside an employee's regular job title and work hours is legally arbitrable.

Applying the balancing test to the issues and facts presented, we conclude that the employees' interests in resolving this dispute through the negotiated grievance procedure outweigh the employer's interests in acting unilaterally. Three employee interests are implicated by the dispute. One is their interest in

not having to perform work outside their job description and job title. Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997). A second is their interest in working their normal, negotiated hours of work. Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, 6-7 (1973); Howell Tp. Bd. of Ed., P.E.R.C. No. 2002-32, 28 NJPER 56 (¶33019 2001). A third is their interest in negotiating over the allocation of work hours and overtime pay opportunities when an employee needs to be replaced. State of New Jersey, (Dept. of Corrections) v. IFPTE, Local 195, 169 N.J. 505 (2001); Town of Kearny, P.E.R.C. No. 98-22, 23 NJPER 501 (¶28243 1997), aff'd 25 NJPER 400 (¶30173 App. Div. 1999). The employer has prerogatives to replace an employee taking a vacation day and ensure that the substituting employee is qualified to perform the necessary work, but the employer has not asserted that Patrick was the only employee who could perform Schippe's duties and PACE has asserted that another Process Operator I could have been called in to work an overtime assignment. We also note that the employer has not asserted that an emergency or a special ability compelled its selection of Patrick rather than another employee to replace Schippe. The employer's interest thus appears to center on reducing its labor costs, a legitimate interest but one that does not justify action outside the collective negotiations process. Paterson State-Operated School Dist., P.E.R.C. No. 2001-42, 27 NJPER 126 (¶32047 2001), aff'd 28 NJPER _____ (¶_____ App. Div. 2002).

ORDER

The request of the Rahway Valley Sewerage Authority for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: June 27, 2002
Trenton, New Jersey
ISSUED: June 28, 2002