

P.E.R.C. NO. 87-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY SPORTS
& EXPOSITION AUTHORITY,

Petitioner,

-and-

Docket No. SN-86-93
& CO-86-310-181

LABORERS' LOCAL 472,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses an unfair practice complaint, and restrains arbitration of a grievance filed by Laborers' Local 472 against the New Jersey Sports & Exposition Authority. The complaint alleged the Authority violated the Act when it transferred Joseph Sette, a maintenance-laborer and Local 472 committeeman, in retaliation for his activity on behalf of Local 472. The grievance alleged that the transfer violated the parties' contract. The Commission finds, however, that the employer's operational needs dictated the transfer.

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LABORERS' LOCAL 472,

Respondent.

Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, Esqs.
(M. Joan Foster, of counsel)

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(J. Sheldon Cohen, of counsel)

DECISION AND ORDER

On June 4, 1986, the New Jersey Sports and Exposition Authority ("Authority") filed a Petition for Scope of Negotiations Determination.^{1/} The Authority seeks to restrain arbitration of a grievance which Laborers' Local 472 ("Local 472") has filed. The

^{1/} Simultaneously, the Authority filed an application for interim relief with supporting brief and affidavit seeking a stay of arbitration pending the Commission's determination. On June 18, 1986, following a hearing, Commission designee Alan R. Howe denied the application. I.R. No. 86-24, 12 NJPER 661 (¶17249 1986). On June 27, 1986, the Authority filed an appeal from the order denying interim relief. However, an arbitration date was not scheduled before the plenary hearing so it was not necessary for us to act on the Authority's appeal.

grievance alleges that the transfer of Joseph Sette, a maintenance-laborer and Local 472 committeeman, from the detention barn to the main barn area in the backstretch of the Meadowlands racetrack violated the parties' contract. The Authority contends that the reassignment was a necessary exercise of its managerial prerogative and is therefore not arbitrable. Local 472 contends that transfers and reassignments of union officials are arbitrable. It relies on Local 195 v. State, 88 N.J. 393 (1982).

On May 2, 1986, Local 472 filed an unfair practice charge against the Authority. The charge alleges the Authority violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (3),^{2/} when it transferred Sette in retaliation for his activity on behalf of Local 472.

On May 13, 1986, a Complaint and Notice of Hearing issued. The Authority filed its Answer. It admits that it transferred Sette, but contends it was "because the detention barn requires constant manning and such requirement cannot be filled by an individual with committeeman responsibilities [and] that its right to transfer and assign Mr. Sette under the circumstances is a managerial prerogative."

^{2/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

On June 17, 1986, Hearing Examiner Howe consolidated the scope of negotiations and unfair practice proceedings. On August 1, he conducted a hearing. The parties examined witnesses and introduced evidence. They also filed post-hearing briefs.

On October 17, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 87-27, 12 NJPER ____ (¶ ____ 1986) (copy attached). He recommended that the unfair practice allegations be dismissed and that the Commission restrain binding arbitration of the grievance which alleged that Sette was transferred in violation of the parties' collective negotiations agreement. The Hearing Examiner first concluded that Sette was an "officer" or "steward" within the meaning of Local 195.

Nevertheless, he concluded that Sette's transfer was required to meet operational needs and was not motivated by anti-union animus.

On November 26, 1986, after receiving extensions of time, Local 472 and the Authority filed exceptions. Local 472 contends the Hearing Examiner erred in not finding that Sette's transfer was in retaliation for union activity and that the transfer was arbitrable. The Authority contends the Hearing Examiner erred in finding that Local 472 committeemen are "officers" or "stewards" within the meaning of Local 195.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-10) are accurate. We adopt and incorporate them here.

We agree with the Hearing Examiner that the Complaint should be dismissed. It is true that Sette was transferred from the detention area after he was elected committeeman. But this was not in unlawful retaliation for engaging in union activities. Rather, the employer's operational needs dictated the transfer because the superintendent needed the committeeman nearby to make overtime assignments. Moreover, the transfer was made to accommodate Sette so that he could continue to perform the functions of a union committeeman and receive paid time off from his laborer position with the Authority. The evidence shows, as found by the Hearing Examiner, that he could not perform both duties at his present position since the Authority requires the detention barn be manned at all times. Thus, the Authority was not hostile towards the exercise of Sette's protected activities.

For essentially the same reasons and under the particular circumstances of this case, we also find that binding arbitration of the grievance alleging that Sette was transferred in violation of the collective negotiations agreement should be restrained.

In Local 195, our Supreme Court carved out an exception to its earlier determination that transfers are not mandatorily negotiable. See Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 156 (1978). It held that the following clause was mandatorily negotiable:

D. Transfer and Reassignment (For Association Officers and Stewards)

1. The State and the Association recognize that Association Officers and Stewards have in their relationship to their jobs a need for continuity in the assigned shift and location which exceeds that of other fellow employees. It is agreed therefore that these Association Officers and Stewards will not be routinely reassigned or transferred involuntarily.
2. The State and the Association recognize the need to utilize all personnel to meet operational requirements effectively and notwithstanding the commitment in paragraph 1 above, movement of such Association Officers and Stewards may be necessary and appropriate (generally on a temporary basis) in exception to the guideline agreed to in paragraph 1. The exception used in paragraph 2. will not be used arbitrarily.

[88 N.J. at 415]

The Supreme Court stated that:

In this case, we make an exception to the rule that provisions relating to the substantive criteria for transfer are non-negotiable. While the provisions do impinge on the ability of the employer to decide who will be transferred or reassigned, we conclude that in this instance the interest of the employees predominates over the minimal interference with the employer's policy choices. The clauses are limited in scope and do allow transfers of officers and stewards to meet operational requirements. We therefore hold that negotiation on these provisions would not significantly interfere with the formulation or implementation of public policy and we reverse the Appellate Division.

* * *

Even when the government has a legitimate reason for transferring union officials, such as economy or efficiency in the delivery of public services, the employees have a countervailing interest in continuity of the relationship between employees and their bargaining representatives. It is true that allowing negotiation on the issue of the transfer of union officials will interfere


somewhat with the determination of governmental policy. However, we do not believe the interference will be significant, since the class of employees involved is relatively small and the restriction on transfers is limited in scope. Because the employee interest is dominant, the issue is negotiable. [88 N.J. at 419]

The instant contract does not contain the same limitations about operational requirements as the contract contained in Local 195. Further, regardless of whether Sette's role as committeeman makes him a "union official" under Local 195, the record fully developed in the unfair practice proceedings clearly establishes that the Authority made the transfer to meet operational requirements. Under these circumstances, we restrain binding arbitration of this grievance.

ORDER

The Complaint is dismissed. The Authority's request to restrain binding arbitration of the Sette grievance is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
January 16, 1987
ISSUED: January 16, 1987

H.E. NO. 87-27

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
NEW JERSEY SPORTS & EXPOSITION
AUTHORITY,

Respondent-Petitioner,

-and-

Docket Nos. CO-86-310-181 &
SN-86-93

LABORERS' LOCAL 472,

Charging Party-Respondent.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Authority did not violate §§5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act when it involuntarily transferred Joseph Sette, a recently elected Committeeman of the Charging Party, because of its operational need to have a laborer such as Sette available and near the foreman who makes requests for overtime assignments. The Committeeman is responsible for distributing overtime by seniority. The Authority acted without anti-union animus in making the transfer of Sette and sought only to fulfill its operational needs. The Charging Party had sought to submit the matter to arbitration and a restraint of arbitration was recommended by the Hearing Examiner.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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LABORERS' LOCAL 472,

Charging Party-Respondent.

Appearances:

For the Respondent-Petitioner
Grotta, Glassman & Hoffman, Esqs.
(M. Joan Foster, Esq.)

For the Charging Party-Respondent
Schneider, Cohen & Solomon, Esqs.
(J. Sheldon Cohen, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on May 2, 1986, by Laborers' Local 472 (hereinafter the "Charging Party" or "Local 472") alleging that the New Jersey Sports & Exposition Authority (hereinafter the "Respondent" or the "Authority")^{1/} has engaged in unfair practices within the meaning

^{1/} It was agreed at the hearing, infra, that the parties would be identified for purposes of this proceeding as the "Charging

Footnote Continued on Next Page

of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that for approximately 8-1/2 years Joseph Sette has been assigned as a laborer in the paddock area of the Meadowlands race track; on February 27, 1986, Sette learned in a conversation with a supervisory employee of the Authority that if he was elected Committeeman^{2/} he would be transferred to another assignment; on February 28, 1986, Sette was elected Committeeman and on March 3, 1986, he was transferred from the paddock because he engaged in concerted protected activities; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (3) of the Act.^{3/}

A Petition for Scope of Negotiations Determination was filed with the Commission on June 4, 1986, by the Authority,

1/ Footnote Continued From Previous Page

Party" in the case of Laborers' Local 472 and as the "Respondent" in the case of New Jersey Sports & Exposition Authority, notwithstanding that the Authority is both a Respondent and a Petitioner as to the several docket numbers, supra, and Local 472 is both a Charging Party and a Respondent in the same matters.

2/ The Unfair Practice Charge erroneously refers to Sette as seeking election as "Shop Steward." In fact, he sought election as "Committeeman."

3/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

alleging that the Charging Party sought to arbitrate the right of the Authority to reassign Sette from the Detention Barn (paddock) to the Main Barn area in the backstretch of the race track, which the Authority contends is outside the scope of negotiations and is non-arbitrable.^{4/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 13, 1986. On June 17, 1986, the undersigned consolidated the Unfair Practice Charge and the "Scope" petition for hearing. The hearing was held on August 1, 1986 in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally.^{5/} Oral argument was waived and the parties filed post-hearing briefs by September 26, 1986.

An Unfair Practice Charge and a Petition for Scope of Negotiations Determination having been filed with the Commission, a question concerning alleged violations of the Act, as amended,

^{4/} The Authority sought to restrain Local 472's attempt to arbitrate the Authority's decision to transfer or reassign Sette but, following a hearing on June 16, 1986, the undersigned denied the request to restrain arbitration because of the existence of a factual issue to be heard and determined in the instant proceeding (I.R. No. 86-24).

^{5/} At the outset of the hearing the Charging Party moved to suppress the Respondent's defense on the ground that its interrogatories had not been timely answered by the Respondent. After argument, this request was denied on the record.

exists and, after hearing on both matters, and after consideration of the post-hearing briefs of parties, the matters are appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The New Jersey Sports & Exposition Authority is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. Laborers' Local 472 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. A "site plan" of the Authority's Meadowlands Sports Complex was received in evidence as Exhibit R-1 for the purpose of delineating what is known as the "backstretch" area, which is involved in the instant proceeding. The backstretch area is a partial oval of approximately 270 degrees surrounding the race track. It begins with the paddock and Detention Barn at the western end of the race track and continues clockwise (see R-1), there being 18 stables or barns, seven dormitories, a print shop, a maintenance building and a guard house at the eastern end of the race track. The buildings just described cover approximately 40 acres of land. The distance from the paddock to the maintenance building is approximately three-quarters (3/4) of a mile.

4. John Chevalier has been the Backstretch and Track Manager for ten years and directly supervises 58 employees, 20 of whom are laborers in the Local 472 unit on the backstretch. Joseph Sette is under the supervision of Chevalier and was until March 3, 1986, a laborer in the Detention Barn, which is part of the paddock. Sette had worked in the Detention Barn for approximately eight years prior to March 1986.

5. The Detention Barn is where horses on lasix^{6/} are housed, medicated and tested prior to races. The Detention Barn is under the jurisdiction of the New Jersey Racing Commission and testing is done by the State Veterinarian or one of his assistants. The lasix horses must be brought to the Detention Barn five hours prior to their races.

6. Sette's shift in the Detention Barn was 7:00 a.m. to 3:30 p.m. and his duties included washing down and bedding the stalls,^{7/} dumping wastes, washing the concrete area, etc. Chevalier testified without contradiction that the Detention Barn is

6/ "Lasix" is a medication for horses that bleed through the nose, which is closely monitored because it can conceal illegal stimulus drugs.

7/ Chevalier testified testified that as of 7:00 a.m. daily there are eight stalls that have to be cleaned in the Detention Barn.

a sensitive area and that the job duties of the laborer such as Sette must be completed daily.^{8/}

7. Local 472 administers its collective negotiations agreement with the Authority (see e.g. J-1) through its Business Agent, Bernard P. Dzedzic, who is a full-time employee of Local 472 with offices off the premises, and an on-site Shop Steward, currently Thomas P. Clabby. Clabby has been the Shop Steward for a little over two years and represents 60 regular employees of the Authority and 20 to 30 seasonal employees. Functioning under the Shop Steward are six Committeemen.^{9/} The Shop Steward handles grievances under the formal grievance procedure contained in J-1 and is assisted by the Committeemen. Clabby testified that the employees he represents have been instructed to seek out the Committeemen first in connection with grievances before coming to him as Shop Steward. Although the Committeemen have this informal grievance function, their principal function is to allocate overtime among the employees they represent on the basis of seniority.

^{8/} Chevalier testified as to the necessity for someone to relay instructions from the State Veterinarian, but he acknowledged on cross-examination that the lasix horses are in the Detention Barn only 15 minutes prior to the end of the laborer's shift and that it is possible that a majority of the time no horses are in the Detention Barn prior to the end of the laborer's shift.

^{9/} The Shop Steward is appointed by the Business Manager of Local 472 and the six Committeemen are elected.

8. Sette, who had never been a Committeeman, decided to seek election among the 20 laborers in the backstretch in February 1986. Immediately prior to his election on February 28, 1986, Sette was informed by Clabby that Chevalier had advised Clabby that if Sette was elected Committeeman he was going to be transferred from the paddock (Detention Barn) to the Barn Area on the backstretch because Chevalier felt that Sette would be unable to perform his job in the Detention Barn and also function as Committeeman. Chevalier asked Clabby to inform Sette of this fact and he did so. Immediately after Sette was elected Committeeman he was called to Chevalier's office and instructed to report to the Barn Area on Monday, March 3, 1986.^{10/} Since Monday, March 3rd, Sette has been assigned to Barns 6 and 7, a distance of approximately one-quarter (1/4) of a mile from the paddock and within 20 feet of the office trailer used by Fazekas, which is immediately behind Barn 6. In addition to assigning work to the 20 laborers on the backstretch, Fazekas informs the Committeeman of the need for laborers to work overtime when it arises.

10/ Chevalier did not deny speaking with Clabby and Sette regarding his decision to transfer Sette from the Detention Barn to the Barn Area on the backstretch if he became Committeeman.

A grievance was filed by Sette on March 3, 1986 (CP-1), protesting his transfer from the Detention Barn; and following the first-step meeting on Sette's grievance, Chevalier told John J. Fazekas, the working foreman, who assigns work to the 20 laborers on the backstretch, that all of the backstretch employees were to be placed on a rotating basis, which had never been done previously. However this was discontinued one week later and has not reoccurred.

9. Chevalier, in explaining his decision to transfer Sette, testified that in assigning Sette to Barns 6 and 7, he was merely duplicating the assignment of the prior Committeeman, Edward F. Lawlor, who, when he was Committeeman during the nine years prior to the election of Sette, was assigned to Barns 6 and 7. Chevalier noted that the distance between the Detention Barn and Barns 6 and 7 is approximately one-quarter (1/4) of a mile and he testified that Lawlor had traversed this distance by automobile. Since the bulk of the 20 laborers are in the Barn Area on the backstretch, Chevalier concluded that it was necessary to transfer Sette so that, like Lawlor, Sette could perform his overtime allocation function without unduly interfering with the backstretch operation, adding that he would have objected to any laborer serving as Committeeman who was assigned to the Detention Barn, not just Sette. Chevalier also testified that he could not "call men" from the paddock to the adjoining Detention Barn in order to relieve the laborer assigned to the Detention Barn.^{11/} Fazekas testified that in his opinion Sette could not perform his duties in the Detention Barn and function as Committeeman since he would have to leave the Barn unattended and could not properly complete his daily job duties.

^{11/} There are four laborers assigned to the paddock, in addition to the one laborer assigned to the Detention Barn, three of the four laborers working on the day shift from 7:00 a.m. to 3:30 p.m. and one laborer working on the night shift from 5:00 p.m. to 1:30 a.m.

11. Fazekas testified that he does not assign overtime but, when the need arises, he notifies the Committeeman who obtains the laborers required. Fazekas also testified that overtime is largely determined by the weather and occurs more frequently during the winter. On the average, he can provide the Committeeman with five days' to one day's notice of overtime, adding that it took Lawlor an average of one hour to obtain the necessary laborers when the need arose. Lawlor, a witness for the Authority, testified that when he was Committeeman it was necessary for him to leave his work station in the Barn Area in order to obtain laborers for overtime and that he would spend 20 to 40 minutes away from the job three days per week on overtime recruiting assignments. Lawlor testified that, specifically during 1985, he went on overtime recruiting assignments about one or two times per month and this included three or four horse sales during that year.^{12/} Sette testified that exclusive of Saturdays, when five laborers rotate by seniority according to a posted list, he has only had to obtain laborers for overtime on three occasions, each taking about ten minutes. However, Chevalier testified that Sette has recruited laborers for overtime on nine occasions since March 1, 1986.^{13/} Chevalier also

^{12/} Chevalier testified that Lawlor was on Committeeman duties about three hours per week.

^{13/} The Hearing Examiner credits the testimony of Chevalier as to the number of times Sette has recruited for overtime since March 1, 1986, based upon the experience of Lawlor over nine years, whose testimony appears to be completely credible.

testified credibly that Sette could not handle overtime recruiting on coffee breaks and the lunch hour because the coffee breaks are staggered and the lunch hour is 12:00 noon to 12:30 p.m.

12. After becoming Committeeman, Sette clearly performed an informal grievance function, having been involved in a complaint to Chevalier that there was inadequate rain gear and having brought to Chevalier's attention a jurisdictional problem wherein non-union employees were used in cleaning. After the jurisdictional problem occurred again, Sette brought it to the attention of Clabby, the Shop Steward. The Hearing Examiner credits the corroborating testimony of Clabby that Committeemen perform an informal grievance function. The contrary testimony of Chevalier, Fazekas and John J. Feketic, the Director of Labor Relations, that a Committeeman has no function in the handling of grievances, is not credited. The principal reason for not crediting Chevalier, Fazekas and Feketic in this regard is that the Authority's own witness, former Committeeman Lawlor, testified that his duties had included settling grievances before going to the Shop Steward.

DISCUSSION AND ANALYSIS

The Respondent Authority Did Not Violate §§5.4(a)(1) And/Or (3) Of The Act When It Involuntarily Transferred Sette On March 3, 1986, Following His Being Elected Committeeman; Ergo The Request To Restrain Arbitration Is Granted.

In recommending dismissal of the Complaint in the instant case, together with recommending the grant of restraint of arbitration of the grievance based on the same subject matter, the

Hearing Examiner concludes initially that the Charging Party has established that Sette, when elected Committeeman in February 1986, was an "officer" or a "steward" within the meaning of the decision of the New Jersey Supreme Court in IFPTE, Local 195 v. State of New Jersey, 88 N.J. 393 (1982). The conclusion that Sette was an "officer" or a "steward" of Local 472 at the time of his involuntary transfer on March 3rd is supported by the record (see Findings of Fact Nos. 7 & 12, supra).

Also, in deciding this case, the Hearing Examiner makes no distinction between the contract provisions in IFPTE, Local 195, supra, and those in J-1, notwithstanding that J-1 does not contain a specific provision regarding transfers of "officers" and "stewards."

In IFPTE, Local 195 the Court made a narrow exception to the general rule that provisions relating to the substantive criteria for transfers are non-negotiable. While recognizing in that case that "...the interest of the employees predominates over the minimal interference with the employer's policy choices..." the Court expressly noted that the clauses before it were "...limited in scope and do allow transfers of officers and stewards to meet operational requirements..." (Emphasis supplied)[88 N.J. at 419]. The Court also stated that while allowing negotiation on the issue of the transfer of union officials would interfere somewhat with the determination of governmental policy it did "...not believe the interference will be significant, since the class of employees involved is relatively small..." (88 N.J. at 419).

In the case at bar, the Hearing Examiner is not persuaded by the argument of Authority that the six Committeemen in a unit of 60 regular employees and 20 to 30 seasonal employees do not constitute a "relatively small" group of employees, who qualify for protection under IFPTE, Local 195. In other words, as a group, the Committeemen in this case qualify as a "class of employees" who are "relatively small" and are, thus, entitled to the protection against involuntary transfer as enunciated by the Supreme Court in IFPTE, Local 195, supra.

Unfortunately for Local 472, the broad protection afforded Committeemen against involuntary transfer on the backstretch is not the issue to be decided. The question is whether or not Sette, as a Committeeman, is insulated against involuntary transfer by the Authority on the facts of this case. As noted above, Sette is an "officer" or a "steward" within the meaning of IFPTE, Local 195. Further, Sette worked in the Detention Barn as a laborer for approximately eight years prior to March 1986. The sensitive nature of the Detention Barn and Sette's duties therein are set forth in Findings of Fact Nos. 5 & 6, supra.

Even accepting the contentions of Local 472, that it has established a prima facie case that Sette was engaged in the protected activity of seeking election as Committeeman, of which the Authority had knowledge, and that the Authority was illegally motivated and hostile to Local 472 and Sette by having for one week placed backstretch employees on a rotating basis, which had never

been done previously, the Authority has demonstrated a legitimate business justification in the decision of Chevalier to transfer Sette from the Detention Barn to Barns 6 and 7 in the backstretch.^{14/}

The legitimacy of the Authority's decision is reflected in the determination of Chevalier that the laborer in the Detention Barn must be on site continually and that Sette was merely being assigned to the same Barns, Nos. 6 and 7, as those in which Lawlor was assigned during the nine years that he was Committeeman. In being assigned to Barns 6 and 7 Sette is within 20 feet of the office trailer used by Fazekas, who summons the Committeeman when he needs overtime on the backstretch from among the 20 laborers who work there. It appears clear to the Hearing Examiner that the decision of Chevalier makes eminent sense, namely, having the elected Committeeman of Local 472 convenient to reaching out to the 20 backstretch laborers for overtime assignments by seniority under the circumstances of Chevalier being unable to call other men from the paddock to the adjoining Detention Barn in order to relieve a laborer such as Sette (see Finding of Fact No. 9, supra).

The Hearing Examiner also notes that the Authority's need for the obtaining of laborers for overtime requires that the Committeeman spend 20 to 40 minutes away from the job either three

^{14/} The foregoing is a statement of the Supreme Court's analysis in Bridgewater Twp. v. Bridgewater Public Works Ass'n, 95 N.J. 235 (1984).

days a week, as testified to by Lawlor, or three hours per week as testified to by Chevalier. The Hearing Examiner does not credit the testimony of Sette that he has only had to obtain laborers for overtime on three occasions, each of which took about ten minutes. The testimony of Lawlor and Chevalier on this question seems much more likely, including Chevalier's testimony that Sette has recruited laborers for overtime on nine occasions since March 1, 1986 (see Finding of Fact No.11, supra.)

The Hearing Examiner has considered the several cases cited by each counsel in this case as to the arbitrability or non-arbitrability of the subject matter involved in the involuntary transfer of Sette. Having decided, supra, that neither §5.4(a)(1) nor §5.4(a)(3) of the Act have been violated by the conduct of the Authority in transferring Sette involuntarily on March 3, 1986, it becomes academic to discuss the question of arbitrability. Plainly, if the Authority had the legal right to transfer Sette involuntarily on March 3rd then a contractual challenge to this right would necessarily be non-arbitrable. It is for this reason that the Hearing Examiner, in recommending dismissal of the Unfair Practice Charge Complaint, is also recommending that the request to restrain the arbitration proceeding filed with the Board of Mediation be granted.

Based on all of the foregoing, the Hearing Examiner will recommend that the alleged violation by the Authority of §§5.4(a)(1) and (3) of the Act be dismissed. Further, the Hearing Examiner will

recommend that the Authority's request for restraint of the pending arbitration proceeding be granted.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

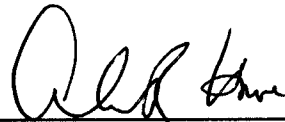
CONCLUSIONS OF LAW

1. The Respondent Authority did not violate N.J.S.A. 34:13A-5.4(a)(1) and (3) when it involuntarily transferred Joseph Sette on March 3, 1986.

2. The Respondent Authority's request to restrain the arbitration proceeding involved in the involuntary transfer of Joseph Sette on March 3, 1986 is granted.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER that the Complaint be dismissed in its entirety and that the Petition for Scope of Negotiations Determination be granted.



Alan R. Howe
Hearing Examiner

Dated: October 17, 1986
Trenton, New Jersey