

P.E.R.C. NO. 2001-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY,

Petitioner,

-and-

Docket No. SN-2001-37

IFPTE, LOCAL 193, AFL-CIO
(TOLL SUPERVISORS OF AMERICA),

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the New Jersey Highway Authority for a restraint of binding arbitration of a grievance filed by IFPTE, Local 193, AFL-CIO (Toll Supervisors of America). The grievance contests a denial of compensatory time. The Commission finds that Local 193 does not dispute the Authority's right to set staffing levels and its requirement that one supervisor be on duty at each toll plaza. Local 193 claims that the Authority could have granted the compensatory time off request and still met its goal by assigning another assistant supervisor to cover the toll plaza. The Commission concludes that an arbitrator may evaluate that factual question and determine whether a leave request was unreasonably denied given the Authority's staffing levels.

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, P.C., attorneys (Robert J. Merryman, on the brief)

For the Respondent, Leonard C. Schiro, attorney

DECISION

On January 29, 2001, the New Jersey Highway Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of a grievance filed by IFPTE, Local 193, AFL-CIO (Toll Supervisors of America). The grievance contests the denial of compensatory time.

The parties have filed briefs and exhibits. The Authority has filed a certification of James L. Roberts, Tolls Facility Manager. These facts appear.

Local 193 represents supervising personnel in the Tolls Division. The Authority and Local 193 are parties to a collective negotiations agreement effective from July 1, 1994 through

September 30, 1999. The grievance procedure ends in binding arbitration.

Article VII is entitled Hours of Work. Section 7 provides, in part:

Ten (10) days per contract year will be granted to employees in recognition of their loss of break-time, lunch time and time spent in relieving each other between shifts. Time off will be granted when requested five (5) days in advance, except for holidays or when another Supervisor from the same Plaza has already been granted time off. In the event death or disability prevents employee from obtaining compensatory time hereunder, such employee shall be entitled to pay in lieu thereof. Eleven days per contract year will be granted to employees with 15 or more years of seniority.

The Authority requires that at least one supervisor or assistant supervisor be on duty at each toll plaza. When there are too few supervisors at a plaza because of illness, vacation or other leave, assistant supervisors from other plazas are reassigned to provide coverage. In order to prevent a shortage of supervisors and provide for coverage on all shifts, Roberts states that the consistent practice is that when a supervisor at a particular plaza is on vacation or takes a compensatory day or other form of leave, other supervisors or assistant supervisors at that plaza are not permitted to take a day off.

There are four supervisors and one assistant supervisor regularly assigned to the Barnegat Toll Plaza; each is assigned to work five shifts per week. There are three shifts a day, seven days a week for a total of 21 shifts. When a supervisor at the

Barnegat Plaza is absent, there are not enough supervisors to cover all the shifts and a supervisor from another plaza is assigned to Barnegat.

On June 4, 2000, a supervisor and an assistant supervisor at the Barnegat Toll Plaza were on scheduled days off. Another supervisor requested a compensatory day off, leaving two supervisors to cover three shifts. An assistant supervisor from an adjoining plaza, Anthony Soriano, was reassigned to Barnegat so that there would be enough supervisors or assistant supervisors to cover all shifts. Soriano is regularly assigned to the New Gretna Toll Plaza on the Garden State Parkway. Soriano then requested a compensatory day off, but his request was denied.

Local 193 filed a grievance on behalf of Soriano. On July 26, 2000, the grievance was denied at Step 2 and on October 10, it was denied at Step 3. At both steps, Local 193 argued that Article VII, Section 7 permits the Authority to deny compensatory leave requests only when another supervisor from the employee's "home" plaza is scheduled to be off.

On November 9, 2000, Local 193 demanded arbitration over whether the Authority violated Article VII, Section 7 when it denied Soriano's request for a compensatory day off. This petition ensued.

Our 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 parties may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets 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 404-405]

The Authority asserts that this matter involves its managerial prerogative to set staffing levels. It asserts that the staffing requirements for each toll plaza are well-established

and that the contract recognizes those requirements and restricts the use of days off accordingly. It further asserts that Local 193 seeks to have an arbitrator decide whether the Authority must grant leave when such leave will result in the reduction of staff below the level it has established.

Local 193 recognizes that a public employer has the right to deny leave requests when granting them would prevent it from meeting its staffing needs. However, it asserts that this case does not implicate minimum staffing levels. It contends that the Authority could have granted Soriano's leave request and still maintained at least one supervisor at each toll plaza by reassigning an assistant supervisor from another toll plaza to Barnegat. It also stresses that Soriano's assigned workplace is not the Barnegat Toll Plaza where staffing levels were down. It argues that an arbitrator may determine whether the Authority unreasonably denied a compensatory day off.

The scheduling of vacation days and other time off is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements. Township of Long Hill, P.E.R.C. No. 2000-40, 26 NJPER 19 (¶31005 1999); Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996); Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989); Borough of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989); City of Orange Tp., P.E.R.C.

No. 89-64, 15 NJPER 26 (¶20011 1988). An employer may deny a requested vacation day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take a vacation day even though doing so will, for example, require it to pay overtime compensation to a replacement employee. The additional labor cost of overtime payments does not make a vacation scheduling dispute non-negotiable. Long Hill; Rutherford; Borough of Bradley Beach, P.E.R.C. No. 90-60, 16 NJPER 43 (¶21020 1989); South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989); Borough of Garwood, P.E.R.C. No. 90-50, 16 NJPER 11 (¶21006 1989); Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989); see also Town of Secaucus, P.E.R.C. No. 2000-73, 26 NJPER 174 (¶31070 2000).

Within this framework, we hold the grievance to be legally arbitrable. Local 193 does not dispute the Authority's right to set staffing levels and require that one supervisor be on duty at each toll plaza on each shift. Instead, it claims that the Authority could have met that goal, even if it had granted Soriano's leave request, by assigning another assistant supervisor to cover Barnegat. An arbitrator may evaluate that factual question and determine whether a leave request was unreasonably denied given the Authority's required staffing levels.

Livingston. In addition, an arbitrator may consider whether Soriano's temporary assignment to Barnegat brought him within the ambit of Article VII, Section 7.

ORDER

The request of the New Jersey Highway Authority for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Madonna, McGlynn, Muscato, and Ricci voted in favor of this decision. None opposed. Commissioners Buchanan and Sandman abstained from consideration.

DATED: June 28, 2001
Trenton, New Jersey
ISSUED: June 29, 2001