I.R. NO. 85-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL HIGH SCHOOL BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-84-133

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 102,

Respondent.

SYNOPSIS

In a Scope of Negotiation proceeding, a Commission designee temporarily restrains an arbitrator from issuing an award pending a full Commission decision. The subject matter of the arbitration was the reassignment of unit work to employees outside of the unit. The employer, however, restructured the unit by creating three new supervisory positions. Under these circumstances said assignment of work is incidental to the managerial prerogative of the creation and assignment of supervisory functions. Therefore, this matter is not arbitrable.

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Appearances:

For the Petitioner
Kenney & McMannus
(Malachi J. Kenney, of Counsel)

For the Respondent
Richard A. Weinmann, Esq.

INTERLOCUTORY DECISION

On June 19, 1984, the Petitioner, Freehold Regional High School Board of Education ("Board") filed a Scope of Negotiations Petition with the Public Employment Relations Commission ("Commission"). The Petition was accompanied by a letter requesting that arbitration in the matter in question be restrained. That arbitration was scheduled for June 21, 1984. Since the Petition and letter were filed late in the day on the 19th (at approximately 4:25 p.m.) the undersigned did not become aware of the motion papers until the following day. The request for the order was ex parte yet the petition was not perfected, and there was neither an affidavit nor verified petition as required by N.J.A.C. 19:14-9.2. Accordingly, the undersigned declined to grant the requested restraint.

On June 26, after the close of the arbitrator's hearing but prior to his rendering a decision, the Charging Party amended his application for interim relief, asking that the arbitrator be restrained from issuing his award in this matter.

The attorney for the Respondent, I.B.T. Local 102, has responded to the merits of the Board's application for restraint and has not objected to the form of the application. Accordingly, the undersigned will rule on the merits of the Board's application.

FACTS

The union represents all non-supervisory custodial, grounds and building maintenance personnel employed by the Petitioner Board. Included in this unit were head custodian positions. Effective May 1, the employer abolished the head custodian positions and created three new positions, one supervisor and two assistant supervisors. These three supervisory positions are outside of the unit. In addition, the head custodians who were reduced in rank to the custodian level suffered at an annual loss in salary of $750.00.

There is not sufficient supervisory work to fully occupy the custodial supervisors. Accordingly, they are expected to perform custodial duties along with supervisory responsibilities.

The issue agreed on by the parties that was placed before the arbitrator was:

> "Did the Board of Education violate the contract by removing the head custodian classification from the bargaining unit and transferring its duties to newly created supervisor? If so, what shall the remedy be?"

As the Commission stated in Point Pleasant Borough Board of Education vs. Point Pleasant Borough Teachers Association, P.E.R.C. No. 80-15, 6 NJPER 299 (¶ 11142 1980):

> "It is well established that decisions concerning ... reassigning supervisory duties from one group of employees to another (is a) major educational policy decision beyond the scope of negotiation."

Union has attempted to distinguish the instant case from Point Pleasant, supra by relying on the Commission's characterization in Point Pleasant of the shifting of work from unit employees to non-unit employees as "incidental."

It is claimed by the union that the work shift in the instant case is far more than incidental. However, the Commission used "incidental" within the context of the balancing test in Board of Education of Woodstown-Pilesgrove Reg. High School v. Woodstown-Pilesgrove Reg. Education Association, 81 N.J. 582, 6 NJPER 77 (¶ 11039 1980) i.e. since the dominant concern is the government's managerial prerogative to determine policy, the term and condition of employment which must give way here, i.e. loss of unit work, must, perforce, be considered "incidental." That is the loss of unit work is considered incidental to the managerial prerogative involved and not, as the union argues, the amount of unit work lost is incidental.

In addition, as to those employees reduced from head custodian to custodian, in Plainfield Association of School Administration v. Board of Education of the City of Plainfield, 178 N.J., super, 11 (App. Div. 1982), the court held that an arbitrator could not order a Board of Education to compensate an employee on the basis of a position

she no longer filled even though that employee might otherwise be entitled to be so paid under the contract. It was held that to allow an arbitrator to rule on the issue of compensation would be a significant interference with governmental policy.

Accordingly, pending a full Commission decision, the arbitrator must be restrained from issuing a decision as to the assignment of unit work to employees outside of the unit. 1/

Edmund G. Gerber
Commission Designee

DATED: August 27, 1984
Trenton, New Jersey

1/ As to the standard to be applied in granting restraints of arbitration procedings where there is a scope of negotiations issue pending before the Commission, see Englewood Board of Education v. Englewood Education Association, 135, N.J. super, 120 (App. Div. 1975).