

P.E.R.C. NO. 91-116

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEQUANNOCK TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-86

PEQUANNOCK TOWNSHIP EDUCATION
ASSOCIATION, INC.

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the Pequannock Township Board of Education's request for a restraint of binding arbitration of a grievance filed by the Pequannock Township Education Association. The restraint is granted to the extent the grievance contests the Board's right to have one custodian/maintenance employee with a black seal license cover an occupied building on overtime.

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Appearances:

For the Petitioner, Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On May 17, 1991, the Pequannock Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Pequannock Township Education Association, Inc. The grievance contests a directive prohibiting the assignment of overtime in occupied buildings to custodians or maintenance personnel without black seal licenses.

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

The Association represents the Board's custodial/maintenance employees and certain other employees. The parties entered into a collective negotiations agreement effective

from July 1, 1989 until June 30, 1993. Article 8K.2. provides, in part:

Assignment to overtime duty rests with the supervisor in charge of custodial and maintenance services and will be distributed equitably. All overtime assignments are to be authorized by the appropriate administrator.

Overtime shall be rotated among the qualified employees in each building and the head custodians will be responsible for keeping an accurate list of the overtime worked in that building. A refusal to work constitutes an opportunity missed in the rotation.

The negotiated grievance procedure ends in final and binding arbitration of contractual disputes.

On January 17, 1991, the Township's Business Administrator/Board Secretary wrote a memorandum about custodial maintenance overtime to the Supervisor of Buildings and Grounds. The memorandum stated:

Effective February 1, 1991, no custodial or maintenance personnel without a black seal license may work overtime covering any of the district's buildings when they are occupied.

Please notify all building head custodians of this immediately.

On January 31, 1991, the Association filed a grievance alleging that this directive unilaterally changed working conditions and violated Article 8K.2. and past practices. The Board denied this grievance; the Association demanded binding arbitration; and this petition ensued.

The Board asserts that N.J.A.C. 12:90-3.5(b) preempts negotiations because it prohibits persons without black seal

licenses from operating its low pressure boilers.^{1/} It also asserts that it has a managerial prerogative to determine that a black seal license is a necessary qualification for overtime work and a reasonable means to ensure the safety of students, teachers and citizens. The Association responds that the Board has violated the contract and past practice; overtime allocation is a mandatorily negotiable subject; and the regulation does not preempt negotiations since the directive was not limited to situations in which employees would be required to operate boilers.

At the outset of our analysis, we stress the narrow boundaries of our jurisdiction. 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. [78 N.J. at 154]

Thus, we do not consider the contractual merits of the grievance.

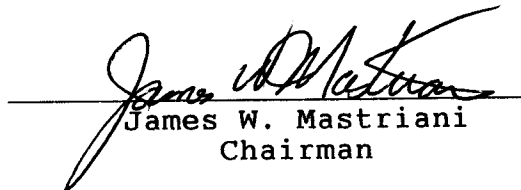
^{1/} This regulation provides:
No unlicensed person shall operate a low pressure steam or hot water heating boiler in which the rated capacity exceeds 100 horsepower or 499 square feet heating surface or 4,000,000 Btu input or 1,000 kilowatts regardless of pressure or temperature conditions.

Contract provisions allocating overtime opportunities among qualified employees are mandatorily negotiable. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). But a public employer has a managerial prerogative to assign overtime to particular employees if special skills and qualifications are needed to perform particular tasks. Id.; Passaic Bd. of Ed., P.E.R.C. No. 90-3, 15 NJPER 490 (¶20200 1989); cf. UMDNJ, P.E.R.C. NO. 89-109, 15 NJPER 272 (¶20118 1989) (requiring dispatchers to have EMT certification is a prerogative). This prerogative guarantees the employer's right to have a custodian/maintenance employee with a black seal license cover an occupied building. On this record, we are not prepared to find a prerogative to require that more than one licensed employee be on duty in a building at any particular time. We will therefore grant a limited restraint.

ORDER

The request of the Pequannock Township Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the Board's right to have one custodian/maintenance employee with a black seal license cover an occupied building.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: June 20, 1991
Trenton, New Jersey
ISSUED: June 21, 1991