

P.E.R.C. NO. 2024-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2024-006

TEAMSTERS LOCAL 11,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Middletown Board of Education's request for a restraint of binding arbitration of a grievance filed by Teamsters Local 11. The grievance alleges that the Board violated the CNA when it did not permit a unit of paraprofessionals the opportunity to participate in Take Your Child to Work Day. The Commission, in applying the Local 195 balancing test, determined that the Board's managerial interest in providing adequate supervision, assistance and care to special needs students outweighed the paraprofessionals' interest in participating in Take Your Child to Work Day, a day that can provide enrichment to the children of negotiations unit members.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Bruce W. Padula, of counsel; Danielle A. Panizzi, on the brief)

For the Respondent, Jameson, Esq., LLC, attorneys (Curtiss T. Jameson, of counsel)

DECISION

On August 4, 2023, the Middletown Township Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 11 (Local 11). The grievance asserts that the Board violated Articles 5 and 15:11 of the parties' collective negotiations agreement (CNA) by prohibiting paraprofessionals from participating in "Take Your Child to Work Day."

The Board filed briefs, exhibits and the certification of its counsel, Danielle A. Panizzi. Local 11 filed a brief, exhibits and the certification of its Business Agent, Anita Clark. These facts appear.

Local 11 represents paraprofessionals employed by the Board. The Board and Local 11 are parties to a CNA in effect from July 1, 2022 through June 30, 2025. The grievance procedure ends in binding arbitration.

Article 5 of the parties' CNA, entitled "Non-Discrimination," provides as follows:

5.1. It is agreed that the parties hereto will continue their present practice of non-discrimination against any employee because of race, color, creed, religion, nationality, gender, marital status, ancestry, domestic partnership status, affectional or sexual orientation, gender identity or expression, genetic information, disability or atypical hereditary cellular or blood trait of any individual, or because of liability for service in the armed forces of the United States, and nationality . . . As a duly elected body exercising governmental power under the laws of the state of New Jersey, the Board agrees that it shall not discriminate against any employee by reason of his membership in the Union and its affiliates. It is also mutually agreed that the Union will not deprive or coerce any employee, directly or indirectly, from the enjoyment of any rights conferred by this Agreement and/or by applicable State or federal law.

Article 15 of the parties' CNA, entitled "Miscellaneous Provisions," provides in relevant part:

15:11 Paraprofessionals will not be required to sweep floors, mop floors, pick up trash, wipe lunch tables (except Category A Lunch Paraprofessionals, who may be required to wipe lunch tables), or perform other work outside of their classification while in the cafeteria or other student lunch locations or settings.

Counsel certifies to the following facts. On March 27, 2023, Assistant Superintendent Matthew Kirkpatrick issued an email to all principals and assistant principals authorizing certain employees of the Board to participate in the annual Take Your Child to Work Day which occurred on April 27, 2023. Counsel also obtained a copy of the email that authorized teachers, certified staff and support staff to participate in the event, but excluded paraprofessionals or custodial staff from participating. Specifically, Assistant Superintendent Kirkpatrick's email stated with regard to paraprofessionals that:

In order to ensure that the district is in compliance with all IEPs, paraprofessionals may not bring their children to work on Thursday, April 27th.

On August 12, 2023, Local 11 filed Grievance B49022 with the former superintendent seeking "paraprofessionals to be able to participate in the National take our Daughters and Sons to Work Day 2023 and each subsequent year." The former superintendent denied the grievance on April 19, stating that "due to legal requirements related to the implementation of IEPs and other obligations of the position, such as safety, privacy, and confidentiality, District administration does not include paraprofessionals in Take Your Child to Work Day."

On April 20, 2023, Local 11 filed a Request for Submission of a Panel of Arbitrators. This petition ensued.

Our jurisdiction is narrow. 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.

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

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Board argues that its decision to exclude paraprofessionals from participating in Take Your Child to Work Day was an appropriate exercise of managerial prerogative. Specifically, the Board avers that paraprofessionals are instrumental in assisting pupils with special needs who require assistance with mobility, toileting and feeding, while also managing possible severe behavior such as physical aggression and elopement. Since the care of a paraprofessional may be required by an Individual Education Program (IEP) pursuant to federal and state law, the Board contends that distraction by a paraprofessional's own child would impede the Board's ability to adequately supervise and effectuate the IEPs of its special needs students.

In response, Local 11 argues the grievance cites to both anti-discrimination and unit work limitation provisions of the CNA, two items it argues are mandatorily negotiable. Further, the Local avers that the issue of Take Your Child to Work day is mandatorily negotiable because it is akin to a holiday. Additionally, the Local contends that the issue does not significantly implicate managerial prerogative because paraprofessionals do not educate students nor do they have the

ability to discipline or otherwise have any authority in the classroom. According to Local 11, since teachers have control of the classroom and are permitted to participate in Take Your Child to Work Day, there is evidence that all needs of students will be met, especially where those teachers are in charge and there will never be a time when a special needs student is alone with a paraprofessional.

In reply, the Board contends that Local 11 ignores that paraprofessionals are needed to provide highly individualized attention due to the intensive needs of the students in their care. Further, the Board notes that while the Local cites to the anti-discrimination provision of the CNA, neither the grievance nor the certification here identifies what type of discrimination was allegedly precipitated by the Board.

This case triggers the third prong of the Local 195 test. We find that, on balance, the Board's managerial interest in determining educational policy outweighs the interests of the Local on this issue of whether paraprofessionals can participate in Take Your Child to Work Day. Therefore, the grievance is not legally arbitrable.

As a general matter, a public employer has the non-negotiable managerial right to assign specific tasks and work to employees. See Local 195, supra, 88 N.J. at 408; Paterson PBA, Local 1 v. Paterson, 87 N.J. 78, 97 (1981); and Franklin Tp. v.

Franlin Tp. PBA Local 154, 424 N.J. Super. 369, 380 (App. Div. 2012).

The Board has a duty to provide a "thorough and efficient" education for all of its students, including those with special needs. N.J. Const. art. VIII, § 4, ¶ 1; Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. As part of that legal obligation, the Board has significant responsibility in maintaining safety and control of the school community, including class coverage and supervision, which are matters of major educational policy. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977). The Board asserts that the provision of a paraprofessional is often mandated by an IEP, which the Board is required to abide by pursuant to the Federal IDEA act. 20 U.S.C. §1400(d)(1)(A). To the extent that the Board asserts that the IEPs may require one-on-one or small group paraprofessional assistance, it is the Board's managerial prerogative to determine how many students are supervised by paraprofessionals. See Somerset Cty. Sheriff, P.E.R.C. No. 2019-17, 45 NJPER (¶51 2019) ("Commission has consistently held that a public employer has a managerial prerogative to determine its staffing levels.")

The Board further asserts that paraprofessionals are critical care providers to children with special needs. Students with acute needs may require assistance with mobility, using the

bathroom and eating, along with control of behavioral issues. The Board exercises managerial prerogative related to educational policy in assigning paraprofessionals to provide individualized care for students that it determines qualify and require close supervision and assistance.

The interests of Local 11 negotiations unit members are that Take Your Child to Work Day can provide valuable enrichment for the children who are able to participate. We also note that Local 11 has an interest in advocating for similar benefits that are provided to other Board employees. However, on balance, the Board's responsibility to provide proper supervision and attention to special needs students is an educational policy decision that outweighs the paraprofessionals' interest in participating in Take Your Child to Work Day.

We also note that while Local 11's grievance cites to the nondiscrimination and unit work provisions of the CNA, nothing in either the grievance, brief, or certifications described the basic elements of any type of discrimination claim nor how the Board required the negotiations unit to perform work outside the scope of the CNA. Without any supporting factual basis on those points, we limit our discussion to the issues presented and discussed above.

ORDER

The Middletown Township Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Higgins, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself. Commissioner Ford was not present.

ISSUED: November 21, 2023

Trenton, New Jersey