

P.E.R.C. NO. 2002-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLEASANTVILLE BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2001-64

PLEASANTVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the City of Pleasantville Board of Education for a restraint of binding arbitration of a grievance filed by the Pleasantville Education Association. The grievance contests a directive that employees sign in and sign out during their lunch hour. The Commission concludes that a school board has a significant interest in knowing the whereabouts of its teachers and that on this record that interest is not outweighed by any inconvenience to teachers in having to sign out and sign in.

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.

P.E.R.C. NO. 2002-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLEASANTVILLE  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2001-64

PLEASANTVILLE EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Schwartz, Simon, Edelstein, Celso & Kessler, LLP, attorneys (Nicholas Celso III, of counsel; Joan M. Damora, on the brief)

For the Respondent, Ramon Gomez, UniServ Representative, New Jersey Education Association

DECISION

On June 19, 2001, the City of Pleasantville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Pleasantville Education Association. The grievance contests a directive that employees sign in and sign out during their lunch hour.

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

The Association represents all certificated personnel employed by the Board. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1998

through June 30, 2001. The grievance procedure ends in binding arbitration.

Article VII is entitled Teacher Work Day, Hours and Load. Sections A, B and D provide:

A. Attendance Procedure

Teachers shall indicate their presence for duty by initialing the appropriate column of the faculty "sign-in" roster.

B. Leaving the Building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

D. Duty-Free Lunch Periods

In accordance with and to the extent permitted by the New Jersey State Board of Education Rules and Regulations, teachers are guaranteed a duty-free lunch period of the amount of time allotted students.

On or about November 2, 2000, the Middle School began requiring teachers who go off school premises during their lunch period to sign out and sign in. On November 3, the Association filed a grievance asserting that the sign out procedure violated Article VII, Section B. On November 14, the grievance was moved to level 2. An undated and unsigned response states:

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

The contract language defines that a teacher can leave the building without requesting permission but does not state that he/she does not have to signout.

Teachers will have to negotiate to insert that teacher may leave without requesting permission and do not have to sign out. Otherwise, I believe we are legal in that teachers must sign out and should sign when they return.

On February 1, 2001, the Association demanded arbitration. 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 cannot consider the contractual merits of the grievance or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates 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 Board states that the sign out/sign in procedure did not prohibit any employees from leaving the building during their lunch hour, but only required the posting of the event. It asserts that the procedure was implemented to keep better track of students, who are not permitted to leave the building. The Board states that this procedure also enables it to verify that it is teachers leaving the building and not students. Finally, the Board asserts that the procedure helps it to know where teachers are in the event of an emergency.

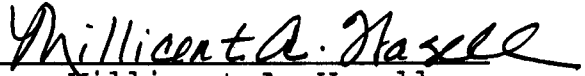
The Association states that it does not dispute that the Board has a non-negotiable managerial prerogative to verify attendance. However, it asserts that the issue for consideration is the adverse impact of such a policy. The Association does not, however, raise any specific issues which are impacted by the policy.

A school board has a significant interest in knowing the whereabouts of its teachers. On this record, that interest is not outweighed by any inconvenience to teachers in having to sign out and sign in. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 135 N.J. Super. 269 (Ch. Div. 1975), aff'd 142 N.J. Super. 44 (App. Div. 1976). Given the wording of the grievance and the demand for arbitration, and the absence of any specified adverse effects, we will restrain binding arbitration.

ORDER

The request of the Pleasantville Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: September 26, 2001  
Trenton, New Jersey  
ISSUED: September 27, 2001