

I.R. NO. 2011-39

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE  
UNIVERSITY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2011-049

UNION OF RUTGERS ADMINISTRATORS-  
AMERICAN FEDERATION OF TEACHERS,  
LOCAL 1766,

Respondent.

SYNOPSIS

A Commission Designee denies the request of Rutgers, the State University of New Jersey, for an interim restraint of binding arbitration of a grievance during the pendency of a scope of negotiations petition before the Public Employment Relations Commission. The grievance, and a demand for binding arbitration, was filed by the Union of Rutgers Administrators-American Federation of Teachers, Local 1766. On February 10, 2010, because of a blizzard that hit all parts of New Jersey, Rutgers cancelled classes at all of its campuses. Essential personnel were required to report to work. Rutgers declared a "Weather Emergency" at its Camden and Newark campuses meaning that nonessential employees were not required to work on February 10 and would be compensated, without having to use paid leave. In contrast, Rutgers declared a "Weather Alert" for its New Brunswick/Piscataway campus, meaning that nonessential employees had to work or use paid leave if unable to report to work. Applying the negotiability balancing test and pertinent Commission and Court precedent, the Designee denies the requested restraint. The Designee finds the dispute to be limited and concludes that the Commission would, in a final scope of negotiations decision, hold that the grievance predominately concerns the mandatorily negotiable issues of employee compensation and claims for credit for used leave. The Designee further determines that such issues are severable from Rutgers' ability to determine whether and to what extent it would offer educational programs and other services on the day in question.

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Appearances:

For the Petitioner, Sarah A. Luke, Assistant General  
Counsel

For the Respondent, Bennet D. Zurofsky, Esq.

INTERLOCUTORY DECISION

On January 11, 2011, Rutgers, the State University of New Jersey, petitioned for a scope of negotiations determination seeking to restrain binding arbitration of a grievance filed by the Union of Rutgers Administrators-American Federation of Teachers, Local 1766.<sup>1/</sup> The grievance asserts that, on February 10, 2010, when a blizzard hit New Jersey, Rutgers violated a collective negotiations agreement, by not declaring a "Weather

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<sup>1/</sup> On April 7, 2010, Local 1766 filed a request with the Commission seeking the appointment of an arbitrator to hear the grievance. An arbitrator was appointed. An arbitration hearing was scheduled for January 11, 2011 and was postponed by the arbitrator until March 25, 2011.

Emergency" for its New Brunswick/Piscataway campus as it did for its Newark and Camden campuses. Instead, Rutgers declared a "Weather Alert" for New Brunswick/Piscataway. The grievance asserts that severe weather conditions existed on all campuses and that Rutgers did not declare a "Weather Emergency" at New Brunswick/Piscataway only to deprive employees of paid time off.

By March 1, 2011, both parties had filed briefs and exhibits in accordance with N.J.A.C. 19:13-3.5. On March 3, Rutgers filed an application for interim relief, seeking an order restraining arbitration until the Commission issues a decision on its scope of negotiations petition.

On March 7, 2011, acting as Commission Designee pursuant to N.J.A.C. 19:14-9.2(d), I executed an Order to Show Cause returnable on March 17. On March 14, Local 1766 filed a brief and exhibits opposing the interim relief application.

On the return date, after both parties argued orally, I denied the request for an interim restraint of arbitration. This decision contains my reasoning.

Local 1766 represents approximately 2,000 administrative employees at Rutgers' Camden, Newark and New Brunswick/Piscataway campuses. Rutgers and Local 1766 are parties to a collective negotiations agreement covering July 1, 2007 through June 30, 2011. Its grievance procedure provides for arbitration of grievances except for those based on allegations of

discrimination for reasons proscribed by the Law Against Discrimination.

Article 48, University Closing, provides in pertinent part:

A. For a day or days when the University is officially declared as "Closed" by the President or appropriate Vice-President, employees shall not be required to charge vacation days, administrative leave or personal days.

B. In addition on any days in which classes are cancelled on a particular campus (Camden, Newark or New Brunswick) by the appropriate Vice-President or Provost due to a weather or other emergency situation, the following will apply regarding attendance.

The article goes on to provide that employees who need to arrive late or leave early must notify their supervisor, who will not unreasonably deny requests to leave early, charge available leave for any time missed and that such actions will be not be cause for discipline. Where necessity requires an employee to be absent, notice must be given to the supervisor, leave time will be charged, but no discipline will be imposed.

Article 49, University Policies and Procedures, provides:

Rutgers and the URA-AFT agree that all members of the bargaining unit shall enjoy and be subject to all University regulations, procedures and the University Policy Library applicable to administrative employees except as may be otherwise set forth in this Agreement. There shall be no duplication or pyramiding of benefits. During the life of this Agreement, any changes in University regulations, procedures or the University Policy Library that constitutes a change in a mandatorily negotiable term and condition of

employment for members of the bargaining unit shall be negotiated.

On February 10, 2010, blizzard conditions existed throughout the State.<sup>2/</sup> Rutgers declared a "Weather Emergency" for its Camden and Newark campuses, but only a "Weather Alert" for the New Brunswick/Piscataway campus.<sup>3/</sup> At all campuses classes were cancelled. Similarly, at all campuses essential personnel reported for work. At Camden and Newark, where "Weather Emergency" decrees issued, no other employees had to work, including non-essential employees represented by Local 1766.

On March 1, 2010, Local 1766 filed a grievance claiming that, by not declaring a "Weather Emergency" at its New Brunswick/Piscataway campuses, Rutgers breached Article 49 and "the spirit of" the agreement. As relief, Local 1766 seeks that:

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<sup>2/</sup> On February 9, 2010, the Governor issued Executive Order 13 in response to the blizzard that began that day and continued into February 10, resulting in significant snowfall throughout the State and on all Rutgers' campuses.

<sup>3/</sup> When a "Weather Emergency" is declared, the entire campus is closed and only essential employees must come to work. A "Weather Alert" can be called, before, during or after "a specific period of time lasting for a portion of a day or a full day when there is a severe snowstorm. . . which makes transportation a problem." In a "Weather Emergency," employees are excused from work, with pay, for the first day and may use paid leave for succeeding days or have their salary adjusted. Where a "Weather Alert" has been declared, employees are expected to report to work. Where conditions force employees to arrive late or require that they leave early they may, at the discretion of, and with notice to, their supervisors, do so without loss of pay. However, any absences must be charged to available leave time.

Any employee who was unable to report to work during the time in question be excused without loss of pay. Any overtime employee who did report to work during the time in question be paid their regular pay plus time and one-half for all hours worked during that period. Any employee who is overtime exempt who did report to work during the time in question receive compensatory time off in the amount equal to the hours worked during the time in question.

On March 24, 2010, a grievance hearing was held and on March 30, Rutgers Assistant Vice President for Human Resources denied the grievance. On April 7, Local 1766 filed a demand for arbitration. After obtaining a postponement of the arbitration hearing set for January 12, 2011, Rutgers filed its petition.<sup>4/</sup>

The University asserts that the grievance challenges its managerial prerogative to decide, on a campus by campus basis, if declaring a "Weather Emergency" or "Weather Alert" is warranted. It cites cases that it asserts supports its argument that educational institutions have a managerial prerogative to decide when to offer instruction, even under adverse conditions.

Local 1766 asserts that its grievance does not challenge Rutgers prerogative to determine what services it will provide or when it will provide them. It maintains that the question

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<sup>4/</sup> Local 1766 states that it opposed the postponement and that the arbitrator granted it based on Rutgers' representation that it would be filing a scope of negotiations petition. Local 1766 alleges that the arbitrator emphasized that absent an order from the Commission or a court, the postponed arbitration would proceed on March 25, 2011.

presented by the grievance is who should bear the cost of wages for those negotiations unit members who were not at work on that day and what shall be the proper amount of compensation. Among the cases it cites is Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980).

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Where a restraint of binding grievance arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144, 155 (1978); Bd. of Ed. of Englewood v. Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975); City of Newark, I.R. No. 2005-4, 30 NJPER 459, 460 (¶152 2004).

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), sets the test for determining if 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.

Rutgers states that its mission "is to provide instructional services to New Jersey citizens and to excel in both research and service to the University." However, no classes were conducted at any of its campuses on February 10, 2010 and "essential" employees reported to work at all campuses. The grievance alleges that unit employees at the New Brunswick/Piscataway campus, unlike their colleagues assigned to the Camden and Newark facilities, had to use paid leave because a "Weather Alert," rather than a "Weather Emergency," was declared.

Applying the Local 195 test, I find that the employee interests are predominate and, moreover, are severable from the decision not to declare a "Weather Emergency" at Rutgers New Brunswick/Piscataway campus.



As in Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, supra., the parameters of this dispute are limited. The Court, 81 N.J. at 593-594, noted:

The Association does not quarrel with the length of one school year or its commencement or terminal dates. Nor does it question the length of the normal school day. Rather the narrow issue here concerns payment for the hours worked due to the extension of the work period on a day before a holiday from that which previously existed. No statute or regulations dealing with teachers' working hours or compensation would have been violated if the additional two hours had not been scheduled or if the teachers had been compensated for having worked those extra hours. There being no demonstration of a particularly significant educational purpose, and the budgetary consideration being the dominant element, it cannot be said that negotiation and binding arbitration of that matter significantly or substantially trespassed upon the managerial prerogative of the board of education.

Similarly, I find that the pursuit of compensation or credit for Local 1766 unit members, who on February 10, 2010, were assigned to the New Brunswick/Piscataway campus and were expected to report for work, would not significantly interfere with Rutgers' educational mission. And, I find those claims to be severable from the decision to declare a "Weather Alert," rather than a "Weather Emergency," for that campus.

In New Brunswick Bd. of Ed., P.E.R.C. No. 86-9, 11 NJPER 453 (¶16158 1985), a case cited by both Rutgers and Local 1766, the school district decided to hold classes despite a heating system

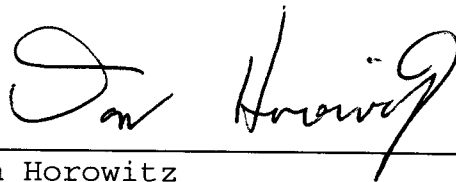
failure that left building temperatures in the 50s for several days. A teacher missed three days of school as a result of becoming sick from the cold temperatures. When she returned, the heating system was still not repaired and she had to go home sick again. The Commission allowed arbitration of a grievance seeking restoration of the sick day holding (11 NJPER at 454) that the issue was not the decision to hold classes in a cold building, but rather the Board's monetary interest:

[O]f not having to give extra compensated leave to employees who allegedly became sick because of unhealthy working conditions and who allegedly have a contractual right to such extra compensation.

I conclude that given the background facts, the Commission would also find that this grievance predominantly involves mandatorily negotiable issues that are also severable from Rutgers' ability to decide which of its facilities should remain open despite severe weather conditions.

ORDER

The request of Rutgers, The State University of New Jersey for an interim restraint of binding arbitration is denied.



Don Horowitz  
Commission Designee

DATED: March 21, 2011  
Trenton, New Jersey