

P.E.R.C. NO. 97-131

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-37

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 74, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Matawan-Aberdeen Regional School District Board of Education for a restraint of binding arbitration of a grievance filed by the Service Employees International Union, Local 74. The grievance asserts that the Board violated an alleged agreement to observe seniority in making reassignments resulting from a reduction in force. The Commission finds that this case involves a transfer decision and was therefore an exercise of the Board's managerial prerogative.

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, Kenney & Gross, attorneys
(Michael J. Gross, of counsel; Amy M. Fankhauser, on the
brief)

For the Respondent, O'Dwyer & Bernstein, attorneys
(Thomas P. Ryan, of counsel)

DECISION AND ORDER

On October 31, 1996, the Matawan-Aberdeen Regional School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Service Employees International Union, Local 74, AFL-CIO ("SEIU"). The grievance asserts that the Board violated an alleged agreement to observe seniority in making reassignments resulting from a reduction in force.

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

The SEIU represents the Board's cafeteria employees, including aides. The parties entered into a collective

negotiations agreement with a grievance procedure ending in binding arbitration and with provisions concerning seniority and bumping rights. It provides, in part:

ARTICLE 20: Bumping

Section 1: The privilege of bumping shall be strictly limited to the following conditions and this section shall supersede all other sections of the contract:

(1.) An employee who is RIFed may bump in accordance with the procedure described in Section 2 hereof.

(2.) An employee whose position is abolished may bump in accordance with the procedure described in Section 2 hereof.

Section 2:

Category 1. Titles: Cook(s), Baker(s), Leader(s) and General Worker(s)

Category 2. Titles: Aide(s)

Category 3. Titles: Food Truck Employee(s)/ General Worker(s)

(1.) Within each category, employees shall bump other employees according to seniority; however, no employee shall bump an employee in another category regardless of prior experience in the other category(ies). In Category 1, employees shall bump into the various titles only if they have had previous work experience in those titles, excepting that all titles in Category 1 shall bump into the general worker title without prior work experience in that title.

Section 3: In the event that the hours for a given position in a particular school(s) are reduced, then the least senior employee(s) in a given job title(s) at the school(s) involved shall be affected first and so on, or, at the option of the Board, all employees in a given title(s) at the school involved shall be affected equally (i.e., hourly time shall be reduced in a like amount for each employee(s)), or, the Board

will attempt to make the hours of those employees in a given job title as uniform as possible with other employees at the same school and in the same job title. In the event that the hours are increased in a particular school(s), then the most senior employee(s) in a given job title at the school(s) involved shall be affected first and so on, or, at the option of the Board, all employees in a given title(s) shall be affected equally (i.e., hourly time shall be increased in a like amount for each employee(s)), or, the Board will attempt to make the hours of those employees in a given job title as uniform as possible with other employees at the same school and in the same job title.

Carmella Repack has been employed since June 2, 1987 as a cafeteria aide. During the 1994-1995 school year she worked at the Matawan Avenue Middle School. The next year she was assigned to the Matawan Regional High School.

Following the voters' rejection of its proposed budget, the Board decided to eliminate a cafeteria aide position for the 1996-1997 school year. Two aides (other than Repack) had the least seniority among all aides, but were equal in seniority to one another. After consultation with SEIU, the Board flipped a coin to break the tie and laid off the aide who had been assigned to the Matawan Avenue Middle School. As the aide who was laid off had been the only one assigned to that school, the Board then reassigned one of the two aides who had worked at the high school in 1995-1996 to the Matawan Avenue Middle School for the 1996-1997 school year. Although Repack had greater seniority than the aide who remained at the high school, the Board chose to reassign her to the middle school because she had worked there before.

According to the Board's Executive Director for Personnel/General Administration, Repack would work three hours a day, the same number of hours worked by each cafeteria aide throughout the district for the 1996-1997 school year.

Repack filed a grievance asserting that she had more seniority than the aide who was to remain at the high school. The grievance also claimed that the high school aide post was a 3.5 hours per day position while the Matawan Avenue job was only a 2.5 hours per day position. The grievant asserts that her seniority contractually entitled her to stay at the high school. The Board's Executive Director for Personnel/General Administration denied the grievance, asserting that Repack had no contractual bumping rights and that the Board had a prerogative to decide to transfer her. SEIU demanded arbitration and 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 this 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]

N.J.S.A. 34:13A-25 provides:

This provision applies to all board of education employees. Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.

Both parties agree that there is no discipline issue involved in Repack's reassignment. The Board relies on N.J.S.A. 34:13A-25 and on Ridgefield Park to assert that the grievance challenges an involuntary transfer and is not arbitrable. The SEIU disputes the Board's characterization of the personnel action as a transfer, asserting that one of two aide positions at the high school was abolished and that the grievant with greater seniority was the aide who was contractually entitled to remain at the high school.

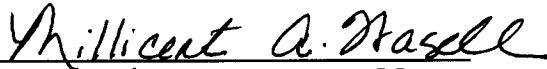
Public employers have a prerogative to transfer or reassign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195; Ridgefield Park; Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990). This case does not involve a laid off employee's right to bump another employee. An aide with the least seniority was laid off. The Board reassigned personnel to ensure coverage at each school. The Board reassigned Repack because she had worked at the middle school before. This transfer decision was therefore an exercise of the Board's managerial prerogative and arbitration of a grievance contesting that decision must be restrained. Contrast State of New Jersey (Dept. of Human Services), P.E.R.C. No. 94-108, 20 NJPER 234 (¶25116 1994), aff'd 21 NJPER 262 (¶26165 App. Div. 1995) (where qualifications not at issue, union could arbitrate alleged miscalculation of job classification seniority for transfers).^{1/}

^{1/} Although the grievance suggests that Repack's high school position required 3.5 hours of work per day and the middle school position required 2.5 hours of work per day, it appears that the hours of all aides were changed to 3.0 hours per day for the 1996-97 school year. Thus, this case does not involve a reduction in hours.

ORDER

The request of the Matawan-Aberdeen Regional School District Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 29, 1997
Trenton, New Jersey
ISSUED: May 30, 1997