

P.E.R.C. NO. 85-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-133

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that International Brotherhood of Teamsters, Local 102 filed against Freehold Regional High School District Board of Education. The grievance concerned the elimination of job titles within the negotiations unit Local 102 represents and the corresponding creation of new supervisory titles outside that unit.

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TEAMSTERS, LOCAL 102,

Respondent.

Appearances:

For the Petitioner, Kenney & McMannus, Esquires
(Malachi J. Kenney, of Counsel)

For the Respondent, Richard A. Weinmann, Esquire

DECISION AND ORDER

On June 17, 1984, the Freehold Regional High School District Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a restraint of binding arbitration of a grievance the International Brotherhood of Teamsters, Local 102 ("Local 102") has filed against it. The grievance concerns the elimination of job titles within the negotiations unit Local 102 represents and the corresponding creation of new supervisory titles outside that unit.

The parties have filed briefs and documents. The following facts appear.

The Board operates five high schools. Its custodians work on three shifts: a Monday through Friday day shift; a Monday through Friday evening shift; and a Tuesday through Friday evening/ Saturday day shift. Administrative staff work only during days

unless a night meeting is scheduled. Prior to May 1, 1984, supervisors and administrators overseeing the custodial program worked on a central, district-wide basis and were not permanently assigned to any school building.

On November 3, 1983, following a representation election, this Commission certified Local 102 as the majority representative of the Board's approximately 84 non-supervisory custodial, grounds and maintenance employees. Included in the unit were the positions of head custodian and assistant head custodian. There were two such positions at each school.^{1/}

On January 17, 1984, the Board adopted a resolution to abolish, effective May 1, the job titles of head and assistant head custodian and to establish the position of building custodial services supervisor and assistant supervisor. The superintendent had recommended these changes to improve the supervisory structure for custodial employees and to assure that employees with clear supervisory responsibility were on duty when custodians were working.

On January 25, 1984, the Board adopted job descriptions for the new positions. These job descriptions require employees in each title to evaluate custodial staff and recommend discipline. In addition, employees in each title must perform non-supervisory duties including work performed by members of Local 102's negotiations unit; this requirement is necessary because there is insufficient supervisory work to occupy fully an employee's shift.

^{1/} One position was vacant.

The Board posted notices of vacancy for the two new job titles. It advertised for applicants, screened candidates, and made appointments effective May 1, 1984. It selected three former head and assistant head custodians for the new jobs. One employee not selected for the new positions retired and five others reverted to their former regular custodial positions with a corresponding salary reduction.

Supervisors work at night; assistant supervisors during the day. There thus appears to be a designated supervisor on duty on all shifts.

Local 102 filed a grievance protesting the custodial reorganization and, in particular, the assignment of "bargaining unit work" to employees who, by reason of their new supervisory status and duties, are no longer unit members. When the parties could not settle this grievance, Local 102 demanded binding arbitration over the following questions:

Did the Board of Education violate the contract by removing the head custodian classification from the bargaining unit and transferring its duties to a newly created supervisor? If so, what shall the remedy be?

Local 102 seeks a restoration of head and assistant head custodian positions with back pay for the five demoted head custodians.
The instant petition ensued.^{2/}

^{2/} The Board filed its petition at 4:25 p.m. on June 19, 1984, shortly before a scheduled June 21 proceeding before arbitrator Kenneth Moffet. The Board requested an interim restraint of arbitration, but because of the lateness of its filing and its lack of compliance with N.J.A.C. 19:14-9.2, in particular the need for an affidavit and verified petition, Commission designee Edmund G. Gerber allowed the arbitration to proceed. After the arbitration hearing, the Board amended its request for interim relief and asked that the arbitrator be restrained from issuing his award. The Commission's designee then conducted an interim

The Board concedes that generally the maintenance of unit work is mandatorily negotiable. It argues, however, it has a non-arbitrable managerial prerogative in this case to reorganize its custodial supervisory structure and that any incidental shift of negotiations unit work outside the unit as a consequence of that decision is also non-arbitrable.

Local 102 asserts that the new positions are essentially the same as the old, with the addition of some supervisory responsibilities, and that this case therefore predominantly involves a mandatorily negotiable issue of preserving unit work.

Under all the circumstances of this case, we conclude that the dispute may not be resolved through binding arbitration.^{3/} Ordinarily, the preservation of unit work is mandatorily negotiable and arbitrable. Rutgers v. AFSCME, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), affd. App. Div. Dkt. No. A-468-81T1 (5/18/83). We agree with the Board, however, that, under the negotiability and balancing tests set forth in Local 195, IFPTE v. State, 88 N.J. 392 (1982) and all the circumstances, this case predominantly involves the Board's right to reorganize its supervisory structure for custodial employees. We also agree that, as a non-severable consequence of that governmental policy decision, the Board may shift some unit work to supervisory employees outside the unit.

^{2/} (Continued) relief proceeding on that request and granted it because he found the grievance predominantly involved the Board's managerial prerogative to reorganize its custodial staff and make supervisory assignments. I.R. No. 85-3.

^{3/} We note that there is no dispute that the new positions truly entail supervisory responsibilities; were there such a dispute, it would be appropriately resolved through a unit clarification petition or unfair practice charge.

Dunellen Bd. of Ed. v. Dunellen Ed. Assn, 64 N.J. 17 (1973);

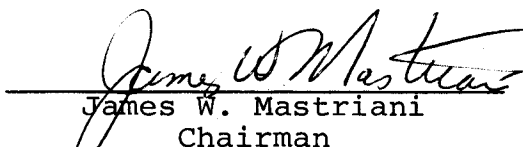
Point Pleasant Borough Bd. of Ed., P.E.R.C. No. 80-145, 6 NJPER

299 (¶11142 1980).^{4/} Accordingly, we hold that the arbitrator may not issue a binding award.

ORDER

A binding arbitration award may not issue in this matter.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. Commissioner Graves opposed. Commissioner Newbaker abstained.

DATED: Trenton, New Jersey
December 19, 1984
ISSUED: December 21, 1984

^{4/} We caution, however, that not every consequence of a managerial decision is non-negotiable. Woodstown-Pilesgrove Reg. Ed. Assn v. Woodstown-Pilesgrove Reg. H. S. Bd. of Ed., 81 N.J. 582 (1980). Some consequences are non-negotiable because they are inextricably intertwined with the decision itself: for example, the decision to layoff some employees necessarily means remaining employees have to perform additional work, In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), pet. for certif den. 81 N.J. 292 (1979). Other consequences are negotiable because they are severable from the decision: for example, a decision to assign extracurricular duties to a teacher is severable from the question of compensation for those duties. Ramapo-Indian Hills Ed. Assn. v. Ramapo-Indian Hills H. S. Dist. Bd. of Ed., 176 N.J. 35 (App. Div. 1980).