

P.E.R.C. NO. 2000-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-66

FAIRVIEW EDUCATION ASSOCIATION
(SUPPORTIVE STAFF UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Fairview Board of Education for a restraint of binding arbitration of a grievance filed by the Fairview Education Association (Supportive Staff Unit). The grievance asserts that the Board violated the parties' collective negotiations agreement when a custodian was not offered an overtime opportunity. The Commission concludes that whether the contract ties overtime assignments to building seniority or district seniority is a dispute for the arbitrator to resolve. The Commission also concludes that the portion of the grievance seeking a statement of reasons for the denial of overtime is legally arbitrable.

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, Oury & Mizdol, P.C., attorneys
(Louis M. Flora, on the brief)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, on the brief)

DECISION

On December 28, 1999, the Fairview Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Fairview Education Association (Supportive Staff Unit). The grievance asserts that the Board violated the parties' collective negotiations agreement when a custodian was not offered an overtime opportunity.

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

The Association represents all regularly employed personnel excluding teaching staff members, confidential employees

and managerial executives. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1996 through June 30, 2001. The grievance procedure ends in binding arbitration.

Article VII is entitled Work Schedule. Section C covers overtime. Section C.1 provides:

Overtime shall be offered on a seniority basis. Said employees shall have the right to refuse overtime work. However, should all employees refuse a specific overtime assignment, the district may then require the qualified employee with the least seniority to perform the overtime work.

Joan Brierty is a custodian assigned to School #3, one of three school buildings in the district. On October 24, 1999, a plumbing problem necessitated an overtime assignment in the Lincoln School. Brierty was not offered the overtime opportunity.

On November 19, 1999, the Association filed a grievance asserting that the failure to offer Brierty the overtime opportunity violated several contractual clauses, including Article VII, Section C. The grievance requested a statement of reasons why Brierty was not asked to work the overtime. The grievance also sought adherence to the contractual overtime clause and compensation for the hours of overtime Brierty missed.

The grievance was denied, but the grievance documents do not state why. The Association demanded arbitration, listing the grievance to be arbitrated as "Improper denial of overtime to Joan Brierty." This petition ensued.

The Board's brief references another grievance filed by Brierty contesting a failure to offer her an overtime opportunity at her assigned school. An arbitrator sustained that grievance.

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 parties 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 403-404]

The Board asserts that the contractual seniority clause and the parties' practice tie overtime assignments to building seniority, not district seniority and that an agreement to use district seniority would require it to assign employees to buildings with which they are unfamiliar. It states that keys and alarm codes are limited to employees assigned to a building to prevent theft and vandalism and ensure security; each building has its own heating system and quirks; and custodians are familiar with the plumbing and electrical systems and shut-off valves in their assigned buildings.

The Association states that Brierty has worked in each building and the October 24 assignment did not require any special skills or training. It acknowledges that if special skills had been needed or if Brierty had been unavailable, the work could have been offered to another employee; but asserts that neither situation was present.

The allocation of overtime opportunities among qualified employees is a mandatorily negotiable subject. Wayne Tp., P.E.R.C. No. 97-74, 23 NJPER 42 (¶28029 1996), aff'd 24 NJPER 141 (¶29071 App. Div. 1998); New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); see also Town of West New York, P.E.R.C. No. 91-52, 17 NJPER 5 (¶22003 1990), aff'd NJPER Supp.2d 262 (¶217 App. Div. 1991). But an employer has a prerogative to make assignments necessary to protect the public interest. Long Branch at 450.

Also, if an employer needs a particular employee with special skills and qualifications to perform an overtime task, it may select that individual to work the overtime and thus meet its needs. City of Camden, P.E.R.C. No. 94-63, 20 NJPER 50 (¶25017 1993).

Under the circumstances presented, we decline to restrain arbitration. Whether the contract ties overtime assignments to building seniority or district seniority is a dispute for the arbitrator to resolve. Ridgefield Park. The grievance seeks a statement of reasons for the denial of overtime; that claim is legally arbitrable. The grievance documents do not disclose the basis for not assigning Brierty and the Board has not identified any special skills needed to perform the October 24 assignment that Brierty did not have. Lack of familiarity with equipment or systems may be a legitimate reason for denying a particular assignment, but we will not restrain arbitration unless such a reason is specified and the need for familiarity in that instance is explained.

ORDER

The request of the Fairview Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Muscato was not present.

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000