P.E.R.C. NO. 99-111

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUMSON-FAIR HAVEN REGIONAL
HIGH SCHOOL BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-99-76

RUMSON-FAIR HAVEN REGIONAL
SCHOOL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Rumson-Fair Haven Regional High School Board of Education for a restraint of binding arbitration of a grievance filed by the Rumson-Fair Haven Regional School Employees Association. The grievance alleges that the Board violated the parties' collective negotiations agreement and past practice when two custodians were assigned to work overtime in excess of 35 hours. In this case the employer indisputably had a need for custodial services on a Sunday so that certain activities could be scheduled and no employees volunteered. The Commission concludes that a public employer may unilaterally mandate that a certain number of employees will work overtime.

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, Reussille, Mausner, Carotenuto, Barger & Steel, attorneys (Martin M. Barger, on the brief)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, P.C., attorneys (Sanford R. Oxfeld, on the brief)

DECISION

On April 6, 1999, the Rumson-Fair Haven Regional High School Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Rumson-Fair Haven Regional School Employees Association. The grievance alleges that the Board violated the parties' collective negotiations agreement and past practice when two custodians were assigned to work overtime in excess of 35 hours.

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

The Association represents custodians employed by the Board. The collective negotiations agreement between the parties expired on June 30, 1998. A successor agreement for the period from July 1, 1998 through June 30, 2001 is being finalized. The grievance procedure ends in binding arbitration.

Article XXII of the agreement is entitled Miscellaneous Working Conditions. Section 1 provides:

> The normal work hours for custodian employees are seven (7) hours per day for a total of thirty-five (35) hours per week. The normal work hours of cafeteria employees shall range from two (2) to eight (8) hours per day depending upon the tasks assigned by the cafeteria manager. Custodian employees shall be employed for twelve (12) months annually; cafeteria employees for ten (10) months annually.
>
> Custodian and cafeteria workers shall be paid over-time on half hours of time worked with payment of time and one-half after 40 hours of work per week.

On September 11, 1998, the Association filed a grievance. The grievance states:

> Two custodians were assigned to work overtime [hours in excess of 35 hours] on Sunday. This violates Article 22, Section 1 of the association/board agreement as well as past practice which has been that overtime hours are worked only when the employee agrees to do so.

The grievance was denied by the principal at levels two and three and by the Board at level four. On November 23, 1998, the Association demanded arbitration. This petition ensued.

The Board asserts that the custodians were assigned the overtime work because all of the custodians had refused to work

overtime on the dates in question. The Board states that it understands that work schedules and hours of work are negotiable, but that on the dates these overtime assignments were made there were after-school activities taking place which required custodial services. It asserts that it has a managerial prerogative to determine when custodian services are needed and how many custodians are needed to perform the services.

The Association argues that the Board has a past practice of not assigning overtime involuntarily. The Association also asserts that management has the right to make reasonable demands when the contract is silent. It states that all the Association is trying to do is enforce a provision which the Board agreed to.

The Board responds that there is no specific language in the contract on this issue and therefore management has the right to require employees to perform overtime work.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), sets forth 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]

It is undisputed that no statute or regulation preempts negotiations.

Applying the Local 195 balancing test, we have long held that employers have a managerial prerogative to determine the days and hours custodial services are needed and the number of custodians on duty at any given time. Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 95-107, 21 NJPER 227 (¶26145 1995). Given those determinations, however, the work schedules and work hours of individual employees are, in general, mandatorily negotiable. Local 195 at 412; Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1 (1973).

In this case, the employer indisputably had a need for custodial services on a Sunday so that certain activities could be scheduled. No custodians volunteered so the Board assigned the work to two custodians. We have held that when no volunteers are available, a public employer may unilaterally mandate that a certain number of employees will work overtime. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). The Association has not articulated any employee interest that outweighs the employer's interest in providing the Sunday activities or warrants departing from our precedent. Accordingly, we restrain binding arbitration.

ORDER

The request of the Rumson-Fair Haven Regional High School 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 and Ricci voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: June 22, 1999
Trenton, New Jersey
ISSUED: June 23, 1999