

P.E.R.C. NO. 94-88

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-93-106

MIDDLESEX COUNTY COLLEGE  
FACULTY UNION, LOCAL 1940,  
AFT (AFL-CIO),

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially restrains binding arbitration of a grievance filed by the Middlesex County College Faculty Union, Local 1940, AFT (AFL-CIO) against Middlesex County College. The grievance asserts that the College violated the parties' collective negotiations agreement when it denied an English professor's request for clerical assistance in a research project. The Commission holds that an arbitrator may determine whether the contractual promise of clerical assistance "for the needs of the faculty" encompasses the professor's research, but the arbitrator must also consider the employer's position with respect to its budgetary needs and staffing levels.

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Appearances:

For the Petitioner, Jackson, Lewis, Schnitzler & Krupman,  
attorneys (Jeffrey J. Corradino and Christopher  
Pinchiaroli, of counsel)

For the Respondent, Dwyer & Canellis, P.A., attorneys  
(Barbara A. Canellis, of counsel)

DECISION AND ORDER

On May 7, 1993, Middlesex County College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by the Middlesex County College Faculty Union, Local 1940, AFT (AFL-CIO). The grievance asserts that the College violated the parties' collective negotiations agreement when it denied an English professor's request for clerical assistance in a research project.

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

The Faculty Union represents the College's faculty. The parties entered into a collective negotiations agreement effective

from July 1, 1991 to June 30, 1993. Article III is entitled Rights of Faculty. Section T provides:

The Board [of Trustees] shall provide clerical assistance adequate to meet the needs of the faculty.

Article VIII is entitled Changes in Policy and Pay Positions.

Section A. provides:

The Board agrees that it will make no change in existing policy relative to wages, hours, and other conditions of employment without appropriate prior consultation and negotiations with the Union.

The grievance procedure ends in binding arbitration.

Dr. Ralph Manogue is an English professor. He conducted an independent research project consisting of a bibliographical search of English literature titles. According to the Faculty Union, Manogue would use information gained from this project in teaching students. However, the College did not request, authorize, fund or sponsor this project.

Manogue asked the College library staff to provide "full bibliographic citation information" for approximately 450 titles. On July 29, 1992, the library director denied this request, stating that "[t]he time demands of your request far exceed our ability to comply" and library staffing levels precluded providing faculty with individualized research assistance. She suggested that Manogue seek funding for a research assistant from his department or an agency.

On September 3, 1992, the library director wrote another memorandum to Manogue. This memorandum stated:

We have encountered a major stumbling block to providing staff time to help you with your research project. I had expected to be able to train the part-time temporary clerk in acquisitions to search the OCLC file using the EPIC software to retrieve citation information for you; however, the current incumbent [sic] has been unable to reach that level of expertise this summer.

As we don't expect to be able to fill the position with a full-time person until early November, it is highly unlikely that we will be able to provide staff time for your project.

It would be best if you would pursue this project through other avenues using the catalog resources of the New York Public Library or NYU's on-line catalog. I'm very sorry for the inconvenience, but there just isn't any way I can free up staff to assist with your research.

The library director discussed Manogue's request with Faculty Union representatives. On January 19, 1993, the director wrote a memorandum to the Faculty Union's president. That memorandum stated that the library had not been able to perform the clerical work requested by Manogue or to assign AFSCME staff to do it and suggested these solutions: (1) Manogue could use the New York Public Library and the NYU Library; (2) the library staff could train Manogue to use the EPIC on-line search system of the OCLC national database, subject to his being billed for the substantial on-line charges arising from so large a search, or (3) Manogue could designate an AFSCME staff member to do overtime computer work, subject to his being billed for the cost of that overtime.

On January 20, 1993, the Faculty Union filed a grievance. The grievance asserted that the College's refusal to grant Manogue's

request for assistance violated Section T of Article III. During the processing of the grievance, the Faculty Union orally alleged that the denial violated Section A of Article VIII as well.

A hearing was held. On March 1, 1993, a hearing officer designated by the College president denied the grievance. She found that the College had assisted Manogue before, but concluded that it was not obligated to continue to do so. She accepted the College's interpretation limiting Section T of Article III to requests "directly related to [the faculty member's] work at the College" and she rejected Manogue's request because she believed it involved a personal project and placed an unreasonable demand on the College.

On March 24, 1993, the Faculty Union demanded arbitration. 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 College may have. We specifically decline to consider the parties' arguments about the nature of the

past practice concerning clerical assistance for faculty projects and about the reach of Section T of Article III and whether or not it is limited to classroom-related projects or covers Manogue's request for help.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), establishes a three-part test for determining whether a subject is mandatorily negotiable and hence legally arbitrable:

[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]

No statute or regulation preempts negotiations so we focus on balancing the employees' interests and the employer's interests.

Professors have an appreciable interest in receiving clerical help for their research, an interest that the parties recognized in negotiating Section T of Article III and that the College still appears willing to subsidize for research "directly related" to the professor's work. Thorough and successful research enhances a professor's knowledge, teaching, reputation, and career.

The College has an interest in limiting any clerical assistance to situations where its budgetary needs and staffing levels will not be compromised. We have recognized that interest in two cases. In Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), the majority representative sought to negotiate over this proposal:

The College shall provide clerical support to meet the needs of academic personnel. The Vice President and Dean of the College shall make these determinations based upon needs and budgetary limitations.

The employer retained the right to assign clerical help based upon needs and budget limitations, and we held that the proposal was mandatorily negotiable. Id. at 515. In Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987), the majority representative sought to negotiate over this proposal:

School librarians may request secretarial assistance, and such assistance will be provided with the approval of the principal within budgetary constraints.

We held that this proposal was mandatorily negotiable "given the limitations that it cannot require the Board to hire any additional personnel or relieve librarians of clerical duties incidental to their primary professional duties." Id. at 344.

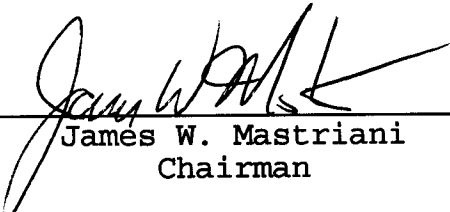
On balance, we hold that this dispute is mandatorily negotiable, provided that its resolution does not compromise the employer's budgeting needs and staffing levels. The arbitrator may determine whether the contractual promise of clerical assistance "for the needs of the faculty" encompasses Manogue's research. But

the arbitrator must also consider the employer's position with respect to its budgetary needs and staffing levels in determining whether its decision to deny assistance was violative of the contract. We cannot consider any of these questions ourselves. Ridgefield Park.

ORDER

The request of Middlesex County College for a restraint of binding arbitration is granted only to the extent, if any, the grievance seeks to compromise the employer's budgetary needs and staffing levels.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan was not present.

DATED: February 16, 1994  
Trenton, New Jersey  
ISSUED: February 17, 1994