

P.E.R.C. NO. 79-72

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Petitioner,

Docket No. SN-79-73

-and-

LOCAL 1761, AFSCME, COUNCIL 52,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission concludes that an issue relating to overtime for desk dispatchers is a required subject for collective negotiations. The dispute arose when one dispatcher became ill and was out for several months. During that time, at least part of the work normally performed by this desk dispatcher was performed by police officers in a different negotiations unit. The employee organization which represented the dispatcher grieved the assignment of unit work to non unit employees. The Commission concluded that the dispute involved the assignment of overtime and shifting of work from employees within a unit to other employees outside the unit. Accordingly, the dispute was found to be a mandatory subject for collective negotiations and to be arbitrable within the limits of the parties' contract.

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Appearances:

For Petitioner, Pitney, Hardin & Kipp  
(S. Joseph Fortunato, of counsel, Nancy A. Adams,  
on the brief)

For Respondent, Rothbard, Harris & Oxfeld  
(Nancy I. Oxfeld, on the brief)

DECISION AND ORDER

On February 14, 1979 Rutgers, the State University, filed a Petition for Scope of Negotiations Determination on the issue of assignment of dispatching duties to police officers on regular time rather than to desk dispatchers who would be working overtime. A brief in support of the petition was filed by Rutgers on March 2, 1979, and Local 1761, AFSCME, Council 52 filed a brief in response on March 23, 1979. Thereafter, Rutgers filed a reply brief.

The facts are not disputed. Article 25, paragraph 3 of the parties' collective negotiations agreement covering July 1, 1977 to June 30, 1979 provides:

3. Overtime Distribution - Rutgers will make every reasonable effort to provide for an equitable distribution of overtime work among employees in each job classification within each work unit, after taking into consideration the nature of the work to be performed during the overtime hours and the qualifications and abilities of the employees in the work unit. Employees shall be expected to work a reasonable amount of overtime upon request. Any refusal of

overtime work shall be recorded as an opportunity to work overtime by the employee. The Union shall have access to the overtime record on a reasonable basis. If, because of refusals to work overtime, there are an insufficient number of employees available to perform the overtime work, Rutgers may assign the overtime work to the necessary number of the least senior employees in the work unit who may have the qualifications and abilities to perform the work.

Rutgers employs desk dispatchers, represented by Local 1761. Police officers employed by Rutgers are not part of the unit. When one dispatcher became ill on January 6, 1978, that employee's work was performed both by other dispatchers on overtime and police officers on regular time. However, beginning on February 9, all of the work was assigned to police officers. This situation continued until the advent of a replacement dispatcher at the end of June 1978. Local 1761 grieved the assignment of unit work to non-unit employees once the dispatchers were completely eliminated from any share of this work. The matter proceeded to arbitration and the award found a contractual violation and called for compensation at overtime rate for two-thirds of the work performed by police officers replacing the sick dispatcher between February 9 and June 29 to be distributed to the dispatchers.

The University now seeks a determination that assignment of work to one group of employees as opposed to another is a managerial prerogative outside the scope of negotiations and therefore non-arbitrable, relying on Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). We believe, however, that the Association is correct in its argument that this matter is governed by the precedent set in In re Middlesex College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1978). Therein, we cited decisions of both the

National Labor Relations Board<sup>1/</sup> and other state labor agencies<sup>2/</sup> and we ruled that shifting work from employees within a bargaining unit to other employees outside the unit is a mandatory subject of negotiations.<sup>3/</sup> When the same amount of work is being performed and the employer is merely revamping personnel assignments, then the logic behind permitting reduction in force does not apply and there must be negotiations.

While it is true that police at Rutgers may perform dispatching as part of their duties, they had previously shared the work at issue herein, and once Rutgers assigned all of it to police, the dispatchers were deprived of work previously the province of their unit. The difference is only one of degree and does not change the principle involved.

This is conceptually related to the subcontracting of unit work to an independent employer which is a mandatory subject of negotiations. Camden County Bd. of Chosen Freeholders, P.E.R.C. No. 78-16, 3 NJPER 332 (1977), enf. App. Div. Docket No. A-1347-77 (March 9, 1979). See also, Fibreboard Paper Products v. NLRB, 379 U.S. 703 (1964).

1/ American Needle & Novelty Co., 206 NLRB 534, 84 LRRM 1527 (1973).

2/ In re Northport Union Free School, 9 PERB 3002 (N.Y. 1976); In re Town of Hamden, Conn. St. Bd. Labor Rel., Dec. #1441 (1976); Bloomfield Hills School Dist., 1975 MERC Lab. Op. 709 (Mich.)

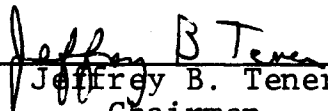
3/ This is not a situation relating to the qualifications of the desk dispatchers to perform the work in question nor to the exercise of governmental policy judgments by the employer in assigning the work involved. See In re Bd. of Ed. of the Borough of Tenafly, P.E.R.C. No. 76-24, 2 NJPER 75 (1976).

Rutgers contends that its action was managerial in that it was done to cut costs. If that alone would remove a subject matter from negotiability, then even salaries would not be mandatorily negotiable, and the Supreme Court has rejected that notion. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed., Assn., 78 N.J. 25 (1978); Bd. of Ed. of Englewood v. Englewood Teachers, 64 N.J. 1 (1973).

ORDER

For the foregoing reasons and under the facts of this case, it is hereby ORDERED that the subject matter of the within dispute is a mandatory subject of collective negotiations, and is arbitrable within the limits of the parties' contract.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett, Parcels, Graves, Hipp and Newbaker voted for this decision.  
None opposed.

DATED: Trenton, New Jersey  
April 26, 1979  
ISSUED: April 27, 1979