

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE-OPERATED
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2000-110

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies, in part, the request of the Paterson State-Operated School District for a restraint of binding arbitration of grievances filed by the Paterson Education Association. The grievances allege that the District violated the parties' collective negotiations agreement generally by denying District security guards first preference in offering overtime opportunities and specifically by ending Nathaniel Bailey's overtime assignment for an adult education program. The Commission grants the request for a restraint to the extent the grievance would interfere with the district's right to have private security guards assigned to a school to provide after-school security services at the same location. The request is otherwise denied. The Commission denies the request for a restraint of the grievance concerning Nathaniel Bailey's overtime assignment.

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.

P.E.R.C. NO. 2001-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE-OPERATED
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2000-110

PATERSON EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys
(Robert E. Murray, of counsel; Cheryl U. Brown, on the
brief)

For the Respondent, Bucceri & Pincus, attorneys
(Louis P. Bucceri, on the brief)

DECISION

On June 16, 2000, the Paterson State-Operated School District petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of grievances filed by the Paterson Education Association. The grievances allege that the District violated the parties' collective negotiations agreement generally by denying District security guards first preference in offering overtime opportunities and specifically by ending Nathaniel Bailey's overtime assignment for an adult education program.

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

The Association represents security guards employed by the District. The District and the Association are parties to a collective negotiations agreement effective from July 1, 1997 through June 30, 2000. The grievance procedure ends in binding arbitration.

Section 7.5 of the agreement is entitled Security Guards. It provides, in part:

7:5-1 Work Day

The work day for security guards represented by the Association shall begin at 8:00 a.m. and end at 3:30 p.m.

7:5-7 Overtime Notification

The District agrees that security officers will be provided with first preference in notice of, and assignment to, all overtime and extra program employment opportunities in the District.

Sections 4:3, 28:2, and 28:3 cover, respectively, the subjects of just cause for discipline, district policy, and maintenance of benefits.

Before 1982, the District employed its own security guards. In 1982, it subcontracted with USA Security to have guard services provided. However, it soon decided to rehire 15-20 of its own guards.

Today, the District employs about 35 security guards. It also contracts with Absolute Security Network, Inc. to provide additional security services. Absolute provides about 90 guards.

Most of the Absolute guards work from 8:00 a.m. to 4:00 p.m. Others work from 9:00 a.m. to 5:00 p.m., 4:00 p.m. to midnight, and 11:00 p.m. to 7:00 a.m. Part-time Absolute guards work from 4:00 p.m. to 6:00 p.m. or 3:00 p.m. to 8:00 p.m. The part-time guards are paid solely for the number of hours worked.

William Coles is the supervisor of security. He chooses to have the same security guards cover all assignments at their assigned schools; such continuity provides consistency and familiarity for the guards, the staff, and the students. If there is an after-school activity, he keeps the same guard at that school, regardless of whether it is a District guard or an Absolute guard. According to Coles, keeping guards at their assigned schools results in having guards who are more alert and quicker to respond to emergencies than guards who are overworked. However, when a guard is required on weekends, he always calls a District guard.

Coles further states that since new alarms were installed in the fall of 1998, responding to night alarm calls has become a full-time job. He therefore hired two Absolute guards to work from 11:00 p.m. to 7:00 a.m, Monday through Friday. On the weekends, he responds to alarm calls and a District guard helps him.

Nathaniel Bailey is a District security guard assigned to the Sage building. He has worked at that building for over 17 years. It is the only District building not patrolled by Absolute guards.

Bailey's work shift is from 7:30 a.m. to 3:00 p.m. Before November 19, 1999, Bailey also worked from 5:00 p.m. to 9:00 p.m., Monday through Thursday, providing security for the adult evening school. He was paid at overtime rates for these work hours.

According to Bailey, Coles told him in early November 1999 that the superintendent thought Bailey's overtime assignment should be taken away because he was making too much in overtime pay. On November 15, the principal of the adult and continuing education programs, Sister Mary Teresa Orbegozo, protested this possibility in a letter to the superintendent. She wrote:

Nat Bailey has been the security guard assigned to 151 Ellison Street for twenty-five years. As you know this school is not typical to the other school. Programs are ongoing day and night and a nursery is housed here. Approximately twelve hundred people come through the building in a given day. The school contains very expensive and not easily replaced technology. Mr. Bailey knows who and who doesn't belong here, where everything is located, and basically is quite familiar with the total operation of the school.

Mr. Nat Bailey is a trusted loyal employee that I need to keep with me. I am respectfully asking you to please see that this request is honored. Thank you very much.

On November 19, 1999, Bailey was relieved of his overtime assignment. An Absolute guard now provides security during the evening school hours. Bailey has allegedly lost thousands of dollars in overtime pay.

Two grievances have been filed. The first, filed by the Association on October 12, 1999, asserts that the District violated sections 4:3, 7:5-7; 28:2, and 28:3 by denying its own security guards first preference in overtime assignments. The second, filed by Bailey on December 12, 1999, asserts that the District violated the same contract provisions by ending his overtime assignment at the Sage building and assigning an Absolute guard to that position instead.

The District denied both grievances. The record does not specify the reason for denying the first grievance. A labor relations officer denied Bailey's grievance because the District had hired a full-time employee to work from 3:00 p.m. to 11:00 p.m. and no longer needed Bailey to work at night. Presumably, the full-time "employee" is the Absolute guard.

The record does not contain any written demands for arbitration, but the Association apparently demanded arbitration of both grievances. This petition ensued. Although the petition does not specify which grievance or grievances are at issue, the parties' briefs address both grievances so we will assume that the District is seeking a restraint of arbitration in both instances. In the future, however, we will insist that the initial petition or an amended petition specify the grievance or grievances in dispute.

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. [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 (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 404-405]

Neither party asserts that any statute or regulation preempts negotiations so we will focus on applying the balancing test in light of relevant precedents and the facts of this case. City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998).

Case law establishes that public sector employers have a managerial prerogative to enter subcontracts to have security services delivered by private sector employers such as Absolute. Local 195 at 405-411; City of Summit, P.E.R.C. No. 99-56, 25 NJPER 44 (¶30018 1998). Caselaw also establishes, however, that the parties may negotiate over which qualified personnel will work what hours at what rates given an employer's determination that work must be done at certain times. 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) (employer retained right to determine when weekend work would be performed; which qualified employees would work those hours and what pay rate would be were legally negotiable and arbitrable); see also Newark State-Operated School Dist., P.E.R.C. No. 98-148, 24 NJPER 315 (¶29150 1998) (employer had prerogative to provide security guard service after 4:00 p.m. with new employees and volunteers, where union did not claim that work had previously been or could have been performed by employees on overtime; compensation and work hours negotiable); Wayne Tp., P.E.R.C. No. 97-74, 23 NJPER 42 (¶28029 1996), aff'd 24 NJPER 141 (¶29071 App. Div. 1998); Borough of Belmar, P.E.R.C. No. 89-73, 15 NJPER 73 (¶20029 1988), aff'd NJPER Supp.2d 222 (¶195 App. Div. 1989).

Neither grievance challenges the District's right to subcontract with Absolute. The Association asserts instead that the parties negotiated in light of that decision and agreed that

District guards would be given preference over non-District employees for overtime and extra program employment opportunities after normal school hours. The District disputes that contractual assertion, but we must assume that it is correct. Ridgefield Park. We must focus on whether such an agreement is within the scope of negotiations.

The employees' interests in seeking to enforce the alleged agreement are economic. As in Bailey's case, their previous compensation may be substantially diminished if their previous work hours are reallocated to Absolute guards.

The District's interests, on this record, are both economic and non-economic. The economic interests, of course, center on reducing overtime compensation costs and replacing them with straight-time payments. The non-economic reasons are articulated by the security supervisor. He has explained his policy of having security guards assigned to a school continue to provide after-school security services at that school. That is so irrespective of whether the assigned guard is a District employee or Absolute guard. The security supervisor believes that such continuity provides better security. In essence, he believes that guards assigned to a school are more qualified than other guards to provide after-school services at that location.

With respect to the first grievance, the district's non-economic interests outweigh the employees' economic interests. The District has a managerial prerogative to determine

that continuity of security services is required at each school. We will restrain arbitration to the extent the first grievance seeks to displace that determination by seeking a ruling that district guards should be given preference for overtime in all situations.

With respect to the second grievance, however, the District's non-economic reasons do not warrant a restraint of arbitration. Those interests are consistent with the retention of Bailey's overtime assignment since he had worked at the same building for several years, no Absolute guard had been assigned to that location, and his principal urged his retention because of his familiarity with school operations and the people coming and going. We also note that this employer has not determined that security services should be delivered by private sector employees only. The District's interests, therefore, center on its desire to reduce overtime compensation. That is a legitimate concern, but one that can be addressed through the collective negotiations process. New Jersey Sports & Exposition Auth. On balance, we believe the labor cost issue of allocating the evening work hours at the Sage building between District employees or Absolute guards is a mandatorily negotiable one.

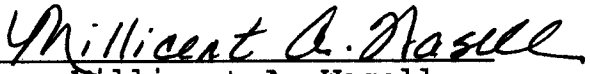
ORDER

The request of the Paterson State-Operated School District for a restraint of arbitration of the October 12, 1999 grievance filed by the Paterson Education Association is granted

to the extent the grievance would interfere with the District's right to have Absolute guards assigned to a school provide after-school security services at the same location. The request is otherwise denied.

The request of the Paterson State-Operated School District for a restraint of arbitration of the December 12, 1999 grievance filed by Nathaniel Bailey is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: January 25, 2001
Trenton, New Jersey
ISSUED: January 26, 2001