

P.E.R.C. NO. 2003-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-48

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Hamilton Township Board of Education for a restraint of binding arbitration of a grievance filed by the Hamilton Township Education Association. The grievance alleges that the employer breached the parties' collective negotiations agreement by requiring cafeteria employees to perform duties outside their job description without additional compensation. The Commission concludes, balancing the parties' interests within the framework of the facts presented, that the employees' interest in being compensated for duties allegedly being performed outside their job descriptions outweighs the employer's interest in having the work performed without additional compensation.

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, Destribats, Campbell, DeSantis &
Magee, attorneys (Dennis M. DeSantis, on the brief)

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, on the brief)

DECISION

On March 10, 2003, the Hamilton Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Hamilton Township Education Association. The grievance alleges that the employer breached the parties' collective negotiations agreement by requiring employees to perform duties outside their job description without additional compensation.

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

The Association represents a unit of professional and non-professional employees, including cafeteria operators, assistant

cooks, cook/relief operators, cafeteria assistants, cafeteria helpers and hourly cafeteria personnel. The parties' collective negotiations agreement is effective from July 1, 2000 through June 30, 2003. The grievance procedure ends in binding arbitration.

On July 1, 2002, a private company, Sodexo Food Services, took over the management of the cafeteria operations in the Hamilton schools. It retained the current employees.

Before then, most of the 17 elementary schools had one employee who held the position of cafeteria worker.^{1/} The job description for cafeteria worker lists their responsibilities:

1. Assist in the preparation of food portions and prepares cafeteria counter.
2. Serves students and staff from cafeteria counters.
3. Removes used dishes and assist in the cleaning of counters, tables and furnishings in the dining area.
4. Maintains the trash and garbage collection area in a neat and sanitary fashion.
5. Assist in the cleaning of food service equipment in kitchen, dish washing rooms, refrigerators, freezers and storage areas.
6. Performs such other duties as may from time to time be assigned.

^{1/} The cafeteria worker is the same as the cafeteria helper referred to in the agreement's recognition clause.

The responsibilities of a cafeteria operator are as follows:

1. Prepares food according to a planned menu and tested uniform recipe making sure that the finished product is of best quality both in flavor and appearance before it is served in a quick and pleasant manner.
2. Maintains the highest standards of safety and cleanliness in the kitchen.
3. Checks food shipments into the schools, signing invoices only after each order has been verified.
4. Records all food requisitions from the storeroom and keeps records of all meals served.
5. Prepares all reports as needed by the Supervisor of Cafeterias.
6. Reports immediately to the principal any problem or accident occurring in or about the cafeteria premises.
7. Confers with the Cafeteria Supervisor regarding any potential personnel problems.
8. Reports immediately to the Cafeteria Supervisor any faulty or inferior quality of food supplies delivered to the school.
9. Performs such other duties as may from time to time be assigned.

The cook, like the cafeteria operator, is responsible for preparing food according to a planned menu and uniform recipes. The cook is also responsible for the safe and efficient operation of the kitchen. The cook assists in determining the quantity of food to be prepared each day, maintaining the monthly inventory,

checking food shipments, cleaning all kitchen equipment, and securing the storeroom door.

After Sodexho took over, the staff at all the elementary schools that had only one cafeteria worker was increased to two cafeteria workers. There are six cook positions in the district; three in the middle schools and three in the high schools. According to the Board, only the cooks prepare and assemble food according to recipes and that food is then distributed to the elementary schools for re-heating. According to the Association, cafeteria workers now order, mix, cook and serve food, as well as collect money, deposit funds, and account for all meals.

In September 2002, the Association filed a grievance which the Board denied. On November 26, the Association demanded arbitration. The statement of the grievance sought to be arbitrated states: "Did the Board of Education violate Article 33 (salary guides) by not paying cafeteria helpers as cooks?" 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 the grievance or any contractual defenses the Board 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]

The parties' interests must be balanced in light of the issues and facts presented in each case. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998). We will focus on the balancing test since no preemption argument has been made.

The Board argues that it has the right to establish job descriptions and to require employees to perform additional duties related to their normal duties. It points to the job

description for cafeteria workers which requires them to perform "such other duties as may from time to time be assigned." The Board maintains that while the allocation of duties changed after July 2002, the actual duties continued to be those set forth in the job description. It states that the fact that employees are required to reheat more food than they did before did not alter their job description and duties. It further states that at no time was their workload increased since they are paid on an hourly basis and staff was increased in many of the elementary schools. The Board also relies on the agreement's management rights clause in support of its argument that it has the right to determine the method, means and personnel by which operations are to be conducted.

The Association responds that the cafeteria workers' workload has been extended to include duties of cafeteria operators and cooks. It argues that the catchall phrase in the job description does not permit the Board to assign these job duties. The Association further argues that whether the employees were assigned duties beyond their job descriptions must be resolved through the grievance and arbitration procedure. Finally, it maintains that even if the Board has a prerogative to assign these duties, the issue of compensation is severable.

The Board replies that the cafeteria workers' duties have not changed. It states that cafeteria workers have never

prepared food according to a planned menu and tested uniform recipes, but have always reheated food and continue to do so. The Board also argues that there is no compensation issue since employees have not had their work hours or workload increased.

Employees may seek to negotiate for contractual protections against being required to assume duties outside their job titles and beyond their normal duties. See New Jersey Hwy. Auth., P.E.R.C. No. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd ___ NJPER ___ (¶_____ App. Div. 2003); Maplewood Tp., P.E.R.C. 97-80, 23 NJPER 106, 110 (¶28054 1997) and cases cited therein. Parties negotiate over compensation for a position given the amount, nature and difficulty of the work required. Obtaining contractual protection against the imposition of unrelated and out-of-title duties protects the integrity of the equation between the negotiated salaries and the required work. Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980); Somerset Raritan Valley Sewerage Auth., P.E.R.C. No. 97-49, 22 NJPER 403 (¶27220 1996).


Balancing the parties' interests within this framework and given the particular facts presented, we conclude that the grievance is legally arbitrable. The employees' interest in being compensated for duties allegedly being performed outside their job description outweighs any employer interest in having

that work performed without additional compensation. The Board disputes the factual predicate of the Association's claim -- that employees are being required to work out-of-title. But that does not mean that the dispute is non-arbitrable. It simply means that if the Board is correct, the Association would not prevail in arbitration.

ORDER

The request of the Hamilton Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Mastriani and Sandman voted in favor of this decision. Commissioner Ricci was not present. None opposed.

DATED: June 26, 2003
Trenton, New Jersey
ISSUED: June 27, 2003