

P.E.R.C. NO. 2004-56

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-17

TEAMSTERS LOCAL 97 OF  
NEW JERSEY, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Jackson Township Board for restraint of binding arbitration of a grievance filed by Teamsters Local 97 of New Jersey, AFL-CIO. The grievance seeks premium pay for particular duties that are allegedly not part of a maintenance employee's regular duties and that had previously been paid at time and one-half. The Commission holds that an employee's interest in seeking to enforce an alleged agreement for premium pay for specific tasks outweighs the employer's interest in not arbitrating that compensation claim. The issue for the arbitrator is whether the contract or past practice entitles employees to be paid premium pay for performing certain tasks during normal working hours.

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, Schwartz, Simon, Edelstein, Celso &  
Kessler, LLP, attorneys (Marc H. Zitomer, on the brief)

For the Respondent, Mets, Schiro & Kleinle, LLP,  
attorneys (Leonard C. Schiro, on the brief)

DECISION

On September 11, 2003, the Jackson Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by Teamsters Local 97 of New Jersey, AFL-CIO. The grievance seeks premium pay for particular duties that are allegedly not part of a maintenance employee's regular duties and that had previously been paid at time and one-half.

The parties have filed briefs and exhibits. The Board has submitted the certifications of Michael Baldwin, Operations Foreman, and Arnold G. Taranto, a former Board employee and a

current consultant on wastewater facilities and operations. These facts appear.

Local 97 represents transportation, maintenance, custodial, security, and cafeteria personnel. The parties' collective negotiations agreement is effective from July 1, 2001 through June 30, 2004. The grievance procedure ends in binding arbitration.

Harold Wortham is a maintenance employee assigned to the McAuliffe School. The job description for maintenance worker sets forth these duties:

- Maintenance of air conditioning and heating apparatus
- Carpentry
- Masonry
- Electrical
- Painting
- Plumbing
- Tiling
- Layout, job assigned and complete same in a professional manner
- Perform any other tasks assigned by the Facilities Supervisor including working with departments within the Facilities Department
- Perform any other tasks assigned by the Facilities Supervisor and/or the Assistant Superintendent or designee where circumstances prevent assignment through the chain of command described herein.

The Board has constructed and maintains pumping stations, or lift stations at four schools. A lift station pumps wastewater from the schools into municipal sewer lines. When this dispute arose, there were lift stations at three schools (McAuliffe,









Switlik and Goetz). There is also a lift station at the Elms school which opened last year. Before the wastewater enters the pumping station, a basket collects debris, plastic items, and any other large materials that are flushed down the toilets and drains. There are debris baskets at the McAuliffe and Goetz schools, but not at the Switlik school. Before March 1991, the baskets were checked daily and emptied when full, usually about once a week. Checking the lift stations takes approximately five minutes each day and emptying a basket and putting the debris in a trash bag takes approximately fifteen minutes or less. Pumping stations with more control and recording features than the one at the McAuliffe pumping station will require additional time.

Until January 2001, the Board employed Taranto, a civil engineer, part-time as a licensed water and wastewater operator. He oversaw wastewater operations, ensured compliance with State regulations, and checked the lift stations at each of the three schools five days per week. Keith McFadden, a maintenance employee stationed at the high school, was assigned to check the lift stations at each of the three schools the other two days, including one weekend day. On one of the two days, McFadden usually emptied the debris baskets at each school. McFadden was assigned this task because he had some training in wastewater systems.



In January 2001, Taranto retired from his part-time position as wastewater operator, but remained with the district as a consultant. However, he no longer regularly checked the lift stations or emptied the debris baskets. McFadden was assigned these responsibilities and performed them approximately seven days per week, until his own resignation in early March 2001.

At that point, the Board decided that the lift stations would be checked by the maintenance person assigned to each school rather than one person on a district-wide basis. Accordingly, McFadden instructed each maintenance person on how to perform the duties. Harold Wortham now checks the lift station at the McAuliffe School.

The Board also decided that the lift stations did not need to be checked on weekends. According to Taranto, this decision eliminated the need for that overtime work. In that vein, Taranto certifies that between January and March 2001, McFadden received overtime "for checking the system" and may have also received overtime prior to that, although he is not certain. Taranto's certification does not specify whether the overtime was only for work in excess of 40 hours per week, but the Board so states in its reply brief. In its brief, the union asserts that when maintenance staff performed pump station debris removal, they were paid a "premium" rate.

Taranto's certification states that the lift station duty fits within the maintenance employee job description and particularly the section that requires the performance of "other tasks assigned by the Facilities Supervisor including working with departments within the Facilities Department." Taranto maintains that the job takes approximately one hour per week or less, plus any time required to walk from each school to the pumping station, a 5-minute walk at most. Michael Baldwin, operations foreman, concurs that the lift station responsibilities fall within the maintenance job description and states that McFadden, who performed the task originally, was a maintenance employee. Finally, he maintains that no maintenance employee who performs these duties has lost duty time or break time, nor has any employee had to stay after hours to complete the job.

On October 10, 2002, Wortham filed a grievance alleging that lift stations were not a part of the maintenance job and that, in violation of past practice, he is performing work that was previously performed on an overtime basis. He seeks pay at the overtime rate back to March 2001 when he asserts that he began doing the work.

Local 97 states that another grievance was filed in March of 2002, but was settled by the Assistant Superintendent. Local 97

has provided an April 18, 2002 letter from the Assistant Superintendent to Local 97. It stated:

As per our telephone conversation earlier this week, I offer the following two solutions to the Harold Wortham and Jackie Williams grievances:

Wortham - We will post all cleaning of the baskets in all schools as overtime within the Maintenance staff on a rotating basis as per the negotiated agreement.

Williams - The Board will pay the requested amount. Please have her submit her hours and rate to me in writing so that I can approve it and send it to payroll.

The Board states that the Assistant Superintendent is deceased and that it cannot ascertain the meaning or context of his correspondence.

Local 97 states that the grievance was filed when the work continued to be performed by maintenance personnel. The grievance was apparently denied, although no documentation denying the grievance has been submitted. On November 22, Local 97 demanded arbitration. This petition ensued. Arbitration has been postponed pending the outcome of the petition.

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 merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

[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 is alleged to preempt arbitration of the grievance.

The Board argues that this grievance involves its managerial decision to have normal maintenance work performed during regular

work hours, not such mandatorily negotiable issues as allocation of overtime, assignment of work to non-unit employees, or claims that work cannot be completed during the regular work day or that overtime is being denied for work in excess of 40 hours per week.

Local 97 views this as a premium pay case where an arbitrator would determine whether premium pay is applicable to the employees performing the lift station tasks during their normal work hours. It argues that an arbitrator's decision will not affect staffing and will not require the Board to use personnel during off hours.

A public employer has a prerogative to determine staffing levels and to decide whether work beyond the normal work hours, including weekends, will be performed. City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); Bridgewater-Raritan Bd. of Ed., P.E.R.C. No. 95-107, 21 NJPER 227 (¶26145 1995); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983). However, there is no dispute in this matter over staffing levels or over the decision to eliminate checks of the lift stations outside normal work hours.

Public employers also have a prerogative to assign duties that are directly related to an employee's normal responsibilities. See Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997) and cases cited therein; Town of Harrison, P.E.R.C. No. 2002-54, 28 NJPER 179 (¶33066 2002).

However, there is no dispute over whether maintenance employees can be assigned lift station duties.

This dispute is quite narrow. The grievance seeks to enforce an alleged agreement that maintenance employees receive additional pay for performing lift station work during the normal work week. On balance, such a grievance is legally arbitrable.

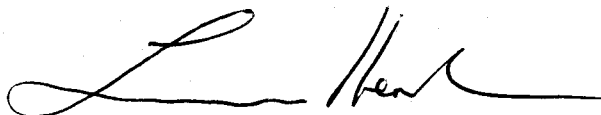
The employees' interest in seeking to enforce an alleged agreement for premium pay for specific tasks outweighs the employer's interest in not arbitrating that compensation claim. The employer's interest in protecting its right to determine what duties will be performed during what hours is not being compromised.

Premium pay for lift station work is conceptually similar to the mandatorily negotiable subjects of hazardous duty pay or shift differentials, where employees receive additional compensation for performing duties under particular circumstances. See Lopatcong Tp., P.E.R.C. No. 91-15, 16 NJPER 479 (¶21207 1990) (premium pay for working alone). The issue for the arbitrator here is simply whether the contract or past practice entitles employees to be paid premium pay for performing certain tasks during normal work hours. We repeat that we express no opinion on that issue. Ridgefield Park.

ORDER

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

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani and Sandman voted in favor of this decision. None opposed.

DATED: February 26, 2004  
Trenton, New Jersey  
ISSUED: February 27, 2004