

P.E.R.C. NO. 2005-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBRIIDGE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-051

WOODBRIIDGE TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Woodbridge Township Board of Education for a restraint of binding arbitration of a grievance filed by the Woodbridge Township Education Association. The grievance seeks to arbitrate a claim that the Board violated the parties' negotiated agreement when it failed to fill three eight-hour bus driver vacancies. The Commission holds that the employer's governmental policy interest in setting the size of its workforce and determining how many employees it needs to perform required tasks outweighs the union's interest in preserving work and guaranteeing employment for employees it represents. The Commission finds that in this case the employer has determined that it no longer needs 32 eight-hour bus drivers and that the Association cannot enforce a minimum staffing provision that would require the Board to staff its workforce with more eight-hour drivers than it wants or needs.

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, Wilentz, Goldman & Spitzer, P.A.,
attorneys (Viola S. Lordi, of counsel; Mary H. Smith,
on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Nancy I. Oxfeld, of counsel; John A. Boppert, on the
brief)

DECISION

On March 9, 2004, the Woodbridge 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 Woodbridge Township Education Association. The Association seeks to arbitrate a claim that the Board violated the parties' negotiated agreement when it failed to fill three eight-hour bus driver vacancies.

The parties have filed briefs and exhibits. The Association has submitted the certification of its president, Toyce Collins.

The Board has submitted the certification of its superintendent, Vincent Smith. These facts appear.

The Association represents a unit of employees including bus drivers. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration.

Article II is entitled Work Schedule. Section B is entitled Ten-Month Employee Work Day. Section 1 provides:

The regular work day for thirty-two (32) bus driver positions shall consist of eight (8) consecutive hours within a 24 hour period. This shall include an unpaid lunch period of no less than one (1) hour and no more than two (2) hours, to be scheduled near the middle of the work day. The contracted compensation for five and one-half (5 1/2) hour drivers shall be increased within thirty (30) days after said drivers are assigned new regular runs. Should such assignments be withdrawn from the drivers, their contracted compensation shall be appropriately reduced. However, in no case shall the contracted compensation be for fewer than five and one-half (5 1/2) hours per day, unless agreed by the driver.

Article III, Section L provides:

The most senior bus driver who works fewer than eight (8) hours per day will be appointed to any vacancy for an eight (8) hour position, as long as the bus driver's performance has been consistently rated as satisfactory during his/her contractual employment.

Smith certifies that the number of eight-hour bus drivers required to transport students is directly related to the number

of midday runs. He also states that all eight-hour drivers now have midday runs. Eight-hour drivers also have "layover" time during which they are paid for garage duty.

On December 1, 2002, Patricia Fimble retired from an eight-hour bus driver position. On June 30, 2003, eight-hour bus drivers Maureen Morella and Sandra Kish also retired. Prior to these retirements there were 33 eight-hour drivers and 42 five and one-half hour drivers.

From June 30, 2003 through September 2003, the Board eliminated three midday runs because of consolidations and changes in program offerings. Therefore, according to Smith, it did not need to replace the retiring eight-hour drivers. On August 20, 2003, the Association filed a grievance alleging as follows:

On August 20, 2003, the Board of Education failed to fill at least two (2) eight hour bus driver vacancies. These vacancies were created by the retirements of Maureen Moretta and Sandra Kish. The Agreement requires that the positions should be filled by the most senior five and one-half (5 1/2) hour drivers.

On September 12, 2003 the superintendent denied the grievance. On November 5, the Association demanded arbitration over the alleged failure to fill two eight-hour bus driver positions.^{1/} In November, the Board hired additional five and

^{1/} The Association states that it became aware of the third
(continued...)

one-half hour bus drivers so that there are now 30 eight-hour positions and 46 five and one-half hour positions.^{2/}

An arbitration hearing was scheduled for March 11, 2004. The parties have agreed to adjourn the arbitration pending the resolution of this petition.

The Board argues that it has a managerial prerogative to determine staffing levels and decide whether to fill vacancies. Therefore, it asserts that the Association may not arbitrate the decision not to replace the retired bus drivers nor seek to enforce any contractual requirement to maintain 32 eight-hour positions.

The Association urges that the Board can obligate itself to provide full-time hours to 32 of its bus drivers and cannot unilaterally reallocate work that was once performed by eight-hour bus drivers to part-time workers being paid less money than was negotiated.

In response, the Board emphasizes that it did not unilaterally remove employees from eight-hour positions and place them in part-time positions. Instead, three incumbents retired and the elimination of the mid-day runs obviated the need to

1/ (...continued)
unfilled position only after this petition was filed.

2/ Collins certifies that six five and one-half hour drivers were hired in September 2003. The difference in number of drivers hired and their dates of hire is not material to our decision.

replace them. The Board states that it was not prohibited from hiring new employees into five and one-half hour positions, citing case law to the effect that decisions to reorganize departments or administrative units are not mandatorily negotiable. Finally, the Board asserts that although no eight-hour drivers experienced a reduction in hours at any time since June 2003, the contract recognizes its right to do so.

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 cannot consider the contractual merits of the grievance or any contractual differences 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]

There is no preemption issue. Instead, this case centers on whether the Association may legally arbitrate a grievance alleging that the Board was contractually obligated to maintain a staff level of 32 eight-hour bus drivers. We must apply the negotiability balancing test in light of the particular facts. Jersey City and POBA, 154 N.J. 555 (1998).

The Board employs eight-hour bus drivers and five and one-half hour bus drivers. The parties have negotiated a contract provision that requires the Board to maintain a minimum of 32 eight-hour drivers. Because of a reduction in the number of midday runs and a consequent reduction in the need for eight-hour drivers, the Board allowed the number of eight-hour drivers to dip below the minimum required by the contract. The Association seeks to arbitrate its claim that the Board violated the contractual minimum staffing provision.

We have long held that minimum staffing provisions are not mandatorily negotiable. See, e.g., Borough of Maywood, P.E.R.C.

No. 87-133, 13 NJPER 354 (¶18144 1987); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985); Readington Tp., P.E.R.C. No. 84-7, 9 NJPER 533 (¶14218 1983); cf. N.J. Transit Bus Operations, Inc., P.E.R.C. No. 90-96, 16 NJPER 266, 269-271 (¶21114 1990), vacated on other gnds P.E.R.C. No. 92-45, 17 NJPER 494 (¶22240 1991) (finite limit on percentage of part-time bus drivers not mandatorily negotiable because it may limit employer's ability to deliver services). The Association has an interest in preserving work and guaranteeing employment for employees it represents. That interest, however, is outweighed by the employer's governmental policy interest in setting the size of its workforce and determining how many employees it needs to perform required tasks.

In this case, the employer has determined that it no longer needs 32 eight-hour bus drivers. The Association cannot enforce a minimum staffing provision that would require the Board to staff its workforce with more eight-hour drivers than it wants or needs.

The Association's reliance on Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), NJPER Supp.2d 118 (¶98 App. Div. 1982), is misplaced. There, the board did not reduce the number of positions; instead it hired a part-time employee to perform all the duties of a full-time employee, but at a lower salary and without benefits. Here, although it appears that new

five and one-half hour drivers were hired after the grievance was filed, there is no contention that they are performing any midday runs previously performed by eight-hour drivers. Nor has there been any reduction in the hours, salary or benefits of any individual or position.

Under all these circumstances, we restrain arbitration over the claim that the Board must employ a minimum of 32 eight-hour bus drivers.

ORDER

The request of the Woodbridge Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

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

DATED: August 12, 2004
Trenton, New Jersey
ISSUED: August 13, 2004