

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BLOOMFIELD,

Petitioner,

-and-

Docket No. SN-2005-006

BLOOMFIELD CROSSING GUARDS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Bloomfield for a restraint of binding arbitration sought by the Bloomfield Crossing Guards Association. The Association contests the assignment of Township-related work to school crossing guards during summer recess. The Commission concludes that employees have an interest in not being required to perform duties outside their job description and that no significant interference with governmental policy arises from the Association's contesting the assignment of duties not incidental to a crossing guard's regular duties.

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, Genova, Burns & Vernoia, attorneys
(Brian W. Kronick, on the brief)

For the Respondent, Ball Livingston, LLP, attorneys
(Craig H. Livingston, on the brief)

DECISION

On July 26, 2004, the Township of Bloomfield petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration sought by the Bloomfield Crossing Guards Association. The Association contests the assignment of Township-related work to school crossing guards during summer recess.

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

The Association represents all school crossing guards. The parties' collective negotiations agreement is effective from

January 1, 2002 through December 31, 2005. The grievance procedure ends in binding arbitration.

Article VIII is entitled Hours of Work and Schedules.

Section D provides, in part:

On those days when the Township public schools are in session, the school crossing guards shall perform crossing guard services for the Township school system. During the summer recess period, Township related work assignments may be offered to school crossing guards, except the Township shall not make or offer any such assignments during the term of this Agreement. . . . [emphasis supplied]

The parties' 1999-2001 agreement contained this provision but not the underscored language. Before the summer of 2002, crossing guards performed Township-related work assignments during summer recess. In 2002 and 2003, the crossing guards did not work during the summer and instead collected unemployment compensation.

In March 2004, the Township notified the Association that it intended to assign Township-related work to the crossing guards during the 2004 summer months. Crossing guards have been assigned to monitor library computers or make sure library patrons are silent, and some have been assigned to Township parks. The Township has created positions in other departments for the crossing guards.

On June 7, 2004, the Association filed for arbitration alleging that the Township breached Article VIII, Section D.^{1/} 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 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

^{1/} The Association filed directly for arbitration so there is no written grievance.

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 Township argues that it has a non-negotiable managerial prerogative to assign employees to perform Township-related work. The Township also argues that arbitration is preempted by unemployment compensation law, which, according to the Township, prohibits collecting unemployment compensation during summer recess.

The Association responds that the Township agreed not to assign Township-related work to the crossing guards and does not have a managerial prerogative to assign school crossing guards to positions unrelated to their job duties. The Association argues that we do not have jurisdiction to determine who is eligible for unemployment compensation.

The Township replies that even though it may have agreed to not make or offer such assignments during the term of the agreement, it cannot be bound by such an agreement. The Township states that it is not asking us to decide whether crossing guards are entitled to unemployment compensation. Instead, it maintains that unemployment compensation law preempts the collection of

unemployment compensation during the summer recess and therefore requires a restraint of binding arbitration.

Whether school crossing guards are entitled to unemployment compensation during the summer is an issue of unemployment compensation law over which we have no jurisdiction. As for the relationship between unemployment compensation law and the negotiability dispute before us, we know of no unemployment statute or ruling that governs the negotiability of an agreement not to assign particular duties to a particular group of employees.

Turning then to that negotiability issue, we must decide whether the employer had a prerogative to assign library and park duties to crossing guards during the summer. We begin with the parties' contract. Both parties acknowledge that there is language in Article VIII, Section D that allegedly prohibits such assignments during the term of the agreement. Such a prohibition, even if agreed-upon, would not bind the employer if enforcement would significantly interfere with the exercise of a managerial prerogative. Ridgefield Park at 160 (a matter that is not legally negotiable in the first place cannot be arbitrable). Thus, we must determine whether an agreement not to assign Township-related work during the term of the agreement was mandatorily negotiable. To do so, we apply the negotiability balancing test.

Public employees have an interest in not being required to perform duties outside their job description. See Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106, 110-112 (¶28054 1997) and cases cite therein. When employees are hired, there is an understanding of what kind and amount of work will be performed relative to the compensation earned. Any significant deviation in job duties would destroy the balance of the duties-compensation equation. Public employers have an interest in being able to assign a variety of duties to employees in order to provide the myriad of services government must deliver. This Commission and the courts have acknowledged these competing interests in a line of cases recognizing both interests and have tried to find a proper balance.

Teachers may negotiate over not having to perform certain non-teaching duties. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977). Such duties include clerical or other tasks that are not incidental to a teacher's primary responsibilities. See, e.g., Bryam (moving furniture and other custodial tasks); Holland Tp. Bd. of Ed., P.E.R.C. No. 2002-47, 28 NJPER 150 (¶33051 2002) (filing standardized tests in student files; regular copying of instructional materials); Paterson State-Operated School Dist., P.E.R.C. No. 98-29, 23 NJPER 514 (¶28250 1997) (clerical tasks not incidental to teachers' normal assignments); Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER

403 (¶23182 1992) (covering main office by answering phones and monitoring student attendance while clerical employees were absent). However, a school board has a prerogative to assign clerical or other non-teaching duties that are incidental to a teacher's primary responsibilities and non-classroom duties that are related to student safety, security and control. Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987).

Firefighters may negotiate over not having to perform duties unrelated to firefighting or emergency services. Maplewood; South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989). In particular, firefighters have been permitted to negotiate over not having to perform plumbing, glazing, plastering, carpentry, wall washing, furniture repair or refinishing or painting, except painting of apparatus floors when necessary. Ibid.; see also Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981).

The only examples of the types of duties assigned to the crossing guards during the summer of 2004 involved the library and parks. Neither assignment appears to involve duties incidental to the crossing guards' regular job duties. It may be that the negotiated relationship between duties and compensation was different under prior contracts, and that the parties contemplated that crossing guards would perform other duties. However, the Association claims that the parties changed that

relationship and that under this agreement, crossing guards are not expected to perform other duties. Under these circumstances, we discern no significant interference with governmental policy arising from the Association's contesting the assignment of duties not incidental to a crossing guard's regular duties. Accordingly, we decline to restrain binding arbitration.

ORDER

The request of the Township of Bloomfield 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, Fuller, Katz and Watkins voted in favor of this decision. Commissioner Mastriani was not present. None opposed.

DATED: November 23, 2004
Trenton, New Jersey
ISSUED: November 24, 2004