P.E.R.C. NO. 2006-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-2005-068

TEAMSTERS INDUSTRIAL AND
ALLIED WORKERS UNION LOCAL 97
OF NEW JERSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Jackson Township Board of Education for a restraint of binding arbitration of a grievance filed by Teamsters Industrial and Allied Workers Union Local 97 of New Jersey. The grievance alleges that the Board violated the parties' agreement when it reassigned a security officer from a 10-month day shift position at the high school to a 12-month position on the midnight shift. The Commission concludes that the Board responded to a budget defeat by abolishing the 10-month daytime position at the high school. The Commission therefore holds that arbitration of this grievance seeking to have the Board reestablish the former position would significantly interfere with its governmental policy decision to eliminate daytime security functions at the high school.

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. 2006-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-2005-068

TEAMSTERS INDUSTRIAL AND
ALLIED WORKERS UNION LOCAL 97
OF NEW JERSEY,

Respondent.

Appearances:

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

For the Respondent, Mets & Schiro, LLP, attorneys (Leonard C. Schiro, of counsel; Roosevelt Porter, on the brief)

DECISION

On March 22, 2005, 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 Industrial and Allied Workers Union Local 97 of New Jersey. The grievance alleges that the Board violated the parties' agreement when it reassigned a security officer from a 10-month day shift position at the high school to a 12-month position on the midnight shift.

The parties have filed briefs and exhibits. The Board has submitted the certification of Michael Nitti, its Director of Human Resources. These facts appear.

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

There is one high school in the district; a second is currently under construction. There are also two middle schools and six elementary schools.

On September 1, 2001, John Dockiewicz was hired as a 10-month security officer at the high school. His annual contract was renewed for the 2002-2003 and 2003-2004 school years.

In April 2004, the school budget was defeated and the Board decided not to fill two 10-month security officer positions for the 2004-2005 school year. One position was held by Dockiewicz and the other by Ronald Seamen.

The Director of Human Resources notified the union business agent of the Board's decision not to fill the positions for the next school year. He indicates that he did so out of professional courtesy, even though the employees had no tenure rights or expectations of continued employment beyond their

contract terms. The agent requested that Dockiewicz be offered the 12-month district-wide night shift security position that was then held by Dennis Leahy because Dockiewicz had more seniority than Leahy. The 12-month security position is not assigned to a school, but provides mobile security patrol throughout the district. The Board granted the request and Dockiewicz was offered the position.

Dockiewicz's 10-month day shift hours were from 10:00 a.m. to 6:00 p.m. The hours for the 12-month security officer position are from 10:00 p.m. to 6:00 a.m. The 12-month security officer is paid a $300 shift differential.

On May 28, 2004, Dockiewicz wrote a note to his supervisor. The note stated that if a reduction in force was invoked, he had no choice but to accept the position offered to protect his benefits and seniority. However, he requested that he not have to work during July and August. The Board granted that request and renewed Leahy's contract so that he could work July and August. Leahy's contract was terminated on September 1, 2004, the day Dockiewicz began working the 12-month schedule.

On September 1, 2004, Local 97 filed a grievance on behalf of Dockiewicz alleging that the assignment to the 12-month position violated Article XX, Section 5. That provision is entitled "Posting Procedures." It provides:

> Any employee appointed to a position which was posted as a "District Employee" shall

> have no contractual right to remain assigned to a specific building, although those employees appointed to a position posted as a "building position" shall continue to have the right to remain at that building.

As a remedy, the grievance seeks to have Dockiewicz remain in his 10-month day-shift position at the high school.

The Board denied the grievance at every level. On October 1, Local 97 demanded arbitration. 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 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 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 asserted to preempt negotiations.

Short of abolishing a position, an employer ordinarily has a duty to negotiate before reducing - or increasing - its employees' workday, workweek or work year for other than governmental or educational policy reasons. See, e.g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 8 (1978); In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98, 101 (App. Div. 1978); Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), aff'd NJPER Supp.2d 108 (¶89 App. Div. 1982), certif. den. 89 N.J. 429 (1989). The rationale in Piscataway and similar cases is that work hours and compensation were the subjects most evidently in the Legislature's mind when it adopted the Act and therefore, absent a significant interference with a governmental policy reason, a unilateral change in work hours violates the spirit and letter of the Act. Piscataway; see also Troy v. Rutgers, 168 N.J. 354 (2001).

The key here is that, unlike Piscataway and related cases, the Board responded to a budget defeat by abolishing Dockiewicz's 10-month daytime position at the high school. Arbitration of this grievance seeking to have the Board reestablish Dockiewicz's former position would significantly interfere with the Board's governmental policy decision to eliminate daytime security functions at the high school. Accordingly, we restrain binding arbitration.[1/]

ORDER

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

BY ORDER OF THE COMMISSION

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: July 28, 2005
Trenton, New Jersey
ISSUED: July 28, 2005

1/ Local 97's reliance on Hackettstown Bd. of Ed. is misplaced. There, the school board did not eliminate the two disputed positions; it simply reduced the work years of those positions. Here, the Board eliminated Dockiewicz's position and the record does not suggest that there are any remaining 10-month security positions at the high school.