

P.E.R.C. NO. 2007-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WASHINGTON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-088

WASHINGTON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Washington Township Board of Education for a restraint of binding arbitration of a grievance filed by the Washington Township Education Association. The grievance asserts that the Board violated its contractual commitment to ensure safe working conditions when it assigned "greeter duty" to teachers and secretaries. The Commission recognizes the Board's position that this dispute predominantly involves a challenge to the its decision to assign teachers to duties it asserts are related to the safety and well being of students and that a school board has a prerogative to regularly assign duties to teachers so long as the duties are incidental to their primary responsibilities. However, the Board's contention more properly concerns the question of what remedy might be appropriate if the arbitrator found a violation of the contract's safety provision. The Commission does not speculate about the propriety of particular remedies before arbitration over a mandatorily negotiable subject; instead parties may challenge arbitral remedies through post-arbitration proceedings. The Commission will permit the Board to re-file its petition should the arbitrator issue an award that the Board believes will significantly interfere with its managerial prerogatives.

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, Capehart Scatchard, attorneys
(Michael E. Heston, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Michael C. Damm, on the brief)

DECISION

On May 22, 2006, the Washington 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 Washington Township Education Association. The grievance asserts that the Board violated its contractual commitment to ensure safe working conditions when it assigned "greeter duty" to teachers and secretaries.

The parties have filed briefs and exhibits. The Association has submitted the certification of Robert Scardino, its executive vice-president and a teacher at the Chestnut Ridge Middle School. These facts appear.

The Association represents all certificated personnel and certain other employees. The parties' most recent collective negotiations agreement is effective from July 1, 2004 through June 30, 2007. The grievance procedure ends in binding arbitration.

Article XVII is entitled Protection of Employees. Section A provides:

The Board of Education will make every effort to ensure safe working conditions. In the event of disorder or disruption in the regular school program, the Association shall have the right to meet with the Board on matters regarding employee safety.

The Board has several policies and regulations dealing with School Security, School Visitors and Pupil Liability. Regulation 7440 addresses Security of School Premises and seeks to secure facilities against unwelcome intrusion. Section B.3 of Regulation 7440 provides: "All visitors to school buildings during the school day will be required to register their presence in the school office, pursuant to Policy No. 9150." Policy 9150, entitled School Visitors, authorizes the superintendent and building principal to prohibit the entry of any person into a school or to expel any person and provides that "visitors shall be required to register their presence in the school." Section C.1 of Policy 9150 states that "Parents/guardians and citizens visiting a school shall first go to the Principal's Office, using the front entrance, identifying himself/herself, and expressing

his/her reasons for the visit." Policy 3280, entitled Liability for Pupil Welfare, provides that: "A teaching staff member should not voluntarily assume responsibility for duties he or she cannot reasonably perform. Such assumed responsibilities carry the potential for liability as do assigned responsibilities."

Since the 1999-2000 school year, the Board has assigned teachers on a rotating basis to monitor students and visitors entering the school buildings. The assignment was originally called "front hall duty" and was performed intermittently. Beginning in the 2000-2001 school year, the assignment was renamed "greeter duty" and was staffed for all nine periods. Teachers at the ten elementary and middle schools are required to serve as greeters during their duty period. The Board states that greeter duty is meant to ensure that only enrolled students and visitors with legitimate purposes are admitted to the school buildings while students are present.

On November 21, 2005, the Association filed a grievance.

The grievance states:

It is the position of the Executive Committee, and the membership of the WTEA, that the staff members of the Washington Township School District are currently at risk when assigned to various duties related to safety and security. We, as an Association contend that current practices concerning building security, safety, and access, violated Article XVII paragraph A, working conditions of the existing negotiated agreement between the WTEA and the Washington Twp. Board of Education, BOE policies 9510,

7440, 3280, and any and all contractual policies and state statutes that may apply.

The superintendent denied the grievance. He concluded that the Board has a managerial prerogative to assign teachers to duties relating to student safety and security and that the assignment did not violate any contractual article.

The Association then requested and received a hearing before the full Board on its contention that teachers and secretaries should not be required to serve as greeters. Noting that teachers had been assigned to be greeters for several years, the Board found the grievance was untimely. It also concluded that the grievance raised non-negotiable matters related to student safety and security and that the assignment did not violate Article XVII(A).

In lieu of arbitrating the grievance, the Association proposed that a committee of administration, Board, and Association members be created to explore alternatives to current practices. The Board denied that request.

After this request was denied, the Board modified Regulation 7440, B-3 to state:

All visitors to school buildings during the school day will be required to register their presence in the school's main office or other designated sign-in area, pursuant to Policy No. 9150.

It also modified Policy 9150, C-1 to state:

Parents/guardians and citizens visiting a school shall go first to the main office or other designated sign-in area, using the front entrance, identifying himself/herself, and expressing his/her reasons for the visit.

According to a letter written by a middle school principal in July 2006, the three middle school principals agree that the duties of greeters should be described as allowing visitors to enter the building, having them sign-in, directing them to their destinations, and reporting any concerns about visitors to the administration. According to the letter, using a designated sign-in area reduces the number of visitors entering the main office and relieves secretaries of greeting visitors. This letter, however, covers only three of the ten schools involved in the grievance and does not establish that, as a matter of district-wide policy, the Board does not expect or require its teachers and secretaries to perform any security functions. These principals also agree that greeters do not serve and are not trained as security guards.

Scardino asserts that these changes place the employees in the "untenable position of regulating access of persons without authority to exclude them." He further asserts that teachers have not been trained on how to deal with threatening situations at school and are not versed in search and seizure laws or how to detect contraband or disarm a person with weapons. Scardino states that there are no security personnel at the schools, the

greeter is the first contact for people entering the schools, and there are different security systems in place and different duties for the greeters. In addition, Scardino states that the Board's policies and regulations do not specify who is supposed to ask disruptive persons to leave the premises; subdue threatening and dangerous visitors until law enforcement officials arrive; or patrol entrances when a principal has been alerted to dangerous persons who are nearby and may seek to enter the school. Scardino objects to Association members having to perform security officer duties.

On March 27, 2006, the Association demanded arbitration, stating that the Board was violating the parties' contract by forcing unit members to act as security personnel. This petition ensued.

The Association has submitted articles from a local news website concerning the arrest of students in the Winslow Township school district involving an alleged plot to carry out a shooting massacre in the school lunch room. The Association has also submitted an April 2005 report from the Commissioner of Education titled "Violence, Vandalism and Substance Abuse in New Jersey Public Schools (2003-2004)." That report states that in 2003-2004, there were 9618 enrolled students in the district and 106 incidents of violence, 33 incidents of vandalism, 7 incidents of weapons offenses, and 16 incidents of substance abuse.

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 this grievance, the timeliness of the grievance, or any other contractual defenses the Board 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 asserted to preempt arbitration.

The Association claims that the Board has not ensured safe working conditions as required by Section A of Article XVII. The Board does not dispute that Section A is a mandatorily negotiable health and safety clause. See, e.g., State of New Jersey, P.E.R.C. No. 92-55, 18 NJPER 35 (¶23011 1991); Maurice Tp. Bd. of Ed., P.E.R.C. 87-91, 13 NJPER 123 (¶18054 1987); State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985); see also Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 332 (1989). The Association may seek an arbitral declaration that the working conditions at the elementary and middle level schools are not safe and violate the parties' contract. Mercer Cty., P.E.R.C. No. 2006-59, 32 NJPER 39 (¶21 2006); City of Perth Amboy, P.E.R.C. No. 98-146, 24 NJPER 311 (¶29148 1998).

We recognize the Board's position that this dispute predominantly involves a challenge to its decision to assign teachers to duties it asserts are related to the safety and well being of students. We further recognize that a school board has a prerogative to regularly assign duties to teachers so long as the duties are incidental to their primary responsibilities. See Guttenberg Bd. of Ed., P.E.R.C. No. 2003-71, 29 NJPER 178 (¶52 2003) and cases cited therein. At this juncture, however, we do not have a complete picture of the nature of the duties in all

district schools. In any event, the Board's contention more properly concerns the question of what remedy might be appropriate if the arbitrator found a violation of the contract's safety provision. We will not speculate about the propriety of particular remedies before arbitration over a mandatorily negotiable subject; instead parties may challenge arbitral remedies through post-arbitration proceedings. Old Bridge Bd. of Ed., P.E.R.C. No. 83-60, 9 NJPER 12 (¶14004 1985), aff'd 193 N.J. Super. 182 (App. Div. 1984), aff'd as modified, 98 N.J. 523 (1985); State of New Jersey, P.E.R.C. No. 86-11; Deptford Bd. of Ed., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981). In addition, we will permit the Board to re-file its petition should the arbitrator issue an award that the Board believes will significantly interfere with its managerial prerogatives. Gloucester Cty. College, P.E.R.C. No. 2006-7, 31 NJPER 247 (¶95 2005).

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: September 28, 2006

Trenton, New Jersey