

P.E.R.C. NO. 2008-29

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GREATER EGG HARBOR REGIONAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2008-007

OAKCREST-ABSEGAMI TEACHERS  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Greater Egg Harbor Regional High School District Board of Education for a restraint of binding arbitration of a grievance filed by the Oakcrest-Absegami Teachers Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by assigning teachers to Atrium Duty, which allegedly involves the duties of security and police personnel. The Commission holds that since this assignment is not incidental to a teacher's normal duties and does not involve student safety or security, the challenge to the assignment may be submitted to binding arbitration.

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, P.A.,  
attorneys (Michael E. Heston, on the brief)

For the Respondent, Myron Plotkin, NJEA UniServ  
Representative, on the brief

DECISION

On August 21, 2007, the Greater Egg Harbor Regional High School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Oakcrest-Absegami Teachers Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by assigning teachers to Atrium Duty, which allegedly involves the duties of security and police personnel. We hold that the grievance presents a mandatorily negotiable issue that may be submitted to binding arbitration.

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

The Association represents teachers and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2006 through June 30, 2009. Article 6, Section D is entitled Structure of the Workday. It provides that each classroom teacher shall be responsible for one period daily of an administratively assigned responsibility. The grievance procedure ends in binding arbitration.

The Board employs security guards and two school resource officers who are full-time police officers assigned to the high school.<sup>1/</sup> The security guards are stationed in the main lobby or atrium of Absegami High School. Teachers have been assigned to this area when no security guard is available. The security guard is stationed at a small desk and has a two-way radio. There is also a receptionist at a desk with a telephone located behind a curved half wall. The school doors are not locked. The lobby is not visible from the main office.

The security guard position requires: experience in security work; knowledge of Simplex Fire Alarm systems; ability to perform normal security functions; and the ability to deal effectively

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<sup>1/</sup> The record does not indicate how many security guards are on duty at one time or their locations. The record also does not show the security functions the resource officers perform, their hours or their assigned locations.

with the general public, law enforcement personnel, and emergency personnel. The Association asserts that teachers at Absegami High School are used as replacements when security guards are absent, at lunch or called away from their post.

On November 3, 2006, the vice-principal issued guidelines to teachers assigned to Atrium Duty. The guidelines provide, in relevant part, that teachers:

**Check student hall passes**

**Verify visitor badges**

All (each individual) visitors must have a badge - only those visitors whose sole destination is the Main Office do not need a badge.

**Provide substitute coverage for the sign-in desk.**

All visitors must sign in and show ID. Please be sure that when visitors sign in, they give name and destination, as well as vehicle information. (This is especially important during the later part of the day when vehicles may block buses). **Only** those visitors whose sole destination is the Main Office do not need a badge. All other visitors must have a badge. Badges must be completed by a staff member.

The Board states that when a teacher encounters a disruptive visitor, he or she is to make radio contact with an administrator. The radio frequency used is monitored by the two resource police officers and the security office.

The parties dispute whether the following exist: effective means of communication, written procedures to follow when teachers replace security guards, and in-service training. The

parties also dispute whether the Teacher Job Description and the Teachers' Manual encompass the disputed assignments.<sup>2/</sup> The Association asserts that neither of these documents lists substituting for a trained security guard.

The Association has submitted a Commissioner of Education report on school violence, vandalism and substance abuse in New Jersey public schools for 2005-2006. The district reported 125 instances, broken down into 70 instances of violence, 28 incidents of vandalism, 6 incidents of weapons offenses, and 22 incidents of substance abuse. The Board responds that this

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<sup>2/</sup> In the Teacher Job Description, Job Task D, Paragraph 3 assigns teachers to: (a) administrative duty, (b) home room duty, and (c) records, reports, etc. Job Task E, Paragraph 4 provides that a teacher will supervise behavior and conditions in the building and on school grounds for the safety and well-being of students, staff and visitors by: (a) being observant about activities taking place as he/she moves through the building and takes corrective action if necessary; (b) reporting student misbehavior to the appropriate vice-principal; and (c) reporting situations or conditions which may be unsafe to the principal.

The Teachers' Manual assigns and describes hall duty as:

1. Check lavatories and clear the halls.
2. Check for student passes and escort students who are cutting to their assigned classes.
3. The stairwells should receive special attention during hall rounds.
4. Direct "visitors" to the front office and notify office via phone of their presence in the building. Be alert for any trespassers and report any suspicions at once.

report does not refer to violence by visitors, but within schools by students.

The Association filed a certification from teacher Kevin Robinson making the following allegations. He was assigned to Atrium Duty during the 2006-2007 school year and was told that he was to check in visitors since the school was shorthanded on security guards; he was not provided any guidelines, but was told to ask all visitors for photo IDs and to fill out a visitor's pass if they were to enter school areas other than the main office; and while working the Atrium Duty he had no means of communication and the front doors remained unlocked. Robinson described two incidents. In one, a parent questioned him about whether he had asked the man before her for an ID. She threw a pen down on the desk and it flew up and struck him in the face and she accused him of being a racist. In the other, six young men came to the door and one told Robinson that he wanted to speak with his cousin. Robinson told them that they had to go to the main office. They did not enter the school, but stood outside the doors for five minutes. Robinson stated that he had no radio or telephone so he walked to the main office and asked that a security guard be called. No guard ever came, but Robinson was told that the security guard was watching the men from a camera room.

On December 21, 2006, the Association filed a grievance.

The grievance asserts:

1. The Association contends that professional certificated teachers are being assigned to act as substitute security guards at the main entrance of the building. The District employs security personnel and has local police officers in the schools. This assignment goes beyond simply monitoring the door and hallways, in that it requires the staff to act in lieu of the police and security personnel and at times to engage in police-like duties. See memo dated 11/3/06.
2. The staff manual describes Duty Assignments as "Comprehensive student supervision," and Atrium Duty/Security Duty is not designated, nor is it student supervision. See Staff Manual pages 22-23.
3. The Duty Assignment of manning the security checkpoint violates past practice of the district.
4. The Duty Assignment of manning the security desk is a change in the working conditions as set forth in the collective bargaining agreement. Article 6, paragraph D, section C.

The grievance seeks an end to the practice of using teaching staff as security guards.

The Board denied the grievance and on January 27, 2007, the Association demanded arbitration. This petition ensued.

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 or any contractual defenses the Board may have, including whether these assignments are contemplated by pertinent job descriptions.

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 preempts negotiations over this assignment. N.J.A.C. 6A:16-5.1, "School Safety and Security

Plans," does not expressly, specifically or comprehensively require that teaching staff perform the duties challenged by the Association's grievance. Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982). In addition, neither the Department of Education's explanation of recent amendments nor its responses to the comments received address whether teachers must perform such duties. See 38 N.J.R. 2294(a); 38 N.J.R. 4411(c).

Teachers may negotiate over being required to perform non-teaching duties. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977). But assignments relating to student safety, security and control are not mandatorily negotiable. Ibid. Clauses pertaining to employee safety and security are also mandatorily negotiable, but their enforcement may not significantly interfere with any managerial prerogatives. See Washington Tp. Bd. of Ed., P.E.R.C. No. 2007-14, 32 NJPER 315 (¶131 2006).

Unlike the assignments in Wood-Ridge Bd. of Ed., P.E.R.C. No. 2000-109, 26 NJPER 317 (¶31128 2000), this disputed assignment does not directly involve students, but instead involves providing substitute coverage for the visitors' sign-in desk when security guards are absent. As these tasks are not incidental to a teacher's normal duties and do not directly

involve student safety or security, the challenge to the assignments may be submitted to binding arbitration.<sup>3/</sup>

We are not holding that the parties could not have agreed to have teachers perform these duties, and we are not finding that teachers have not performed these duties in the past. Those issues involve the merits of the grievance and are outside our limited scope of negotiations jurisdiction. We are simply holding that the Board does not have a managerial prerogative to regularly assign these security duties unilaterally and that the Association may pursue a grievance claiming that the assignment violates the parties' agreement.

ORDER

The request of the Greater Egg Harbor Regional High School District Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: November 20, 2007

Trenton, New Jersey

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<sup>3/</sup> Checking student hall passes is part of Atrium Duty and is related to student safety and security, but is not the focus of this dispute.