

P.E.R.C. NO. 2010-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OAKLAND PUBLIC LIBRARY,

Petitioner,

-and-

Docket No. SN-2009-076

RWDSU LOCAL 108, PUBLIC
EMPLOYEES DIVISION, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Oakland Public Library's request for a restraint of binding arbitration a grievance filed by RWDSU Local 108, Public Employees Division, AFL-CIO. The grievance asserts that the Library violated the parties' collective negotiations agreement when it unilaterally changed an employee's work hours. The Commission holds that, on balance, the Library's ability to deploy its personnel to meet the governmental policy goals of increased efficiency and security outweigh Local 108's interest in negotiating a work schedule preferred by the grievant.

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, Scarinci Hollenbeck, attorneys
(Adam S. Abramson, on the brief)

For the Respondent, Oxfeld Cohen, P.C. attorneys
(Nancy I. Oxfeld, on the brief)

DECISION

On May 7, 2009, the Oakland Public Library petitioned for a scope of negotiations determination. The Library seeks a restraint of binding arbitration of a grievance filed by RWDSU Local 108, Public Employees Division, AFL-CIO. The grievance asserts that the Library violated the parties' collective negotiations agreement when it unilaterally changed an employee's work hours. We grant the Library's request for a restraint.

The parties have filed briefs and exhibits. The Library has submitted a certification from Library Director Michele Reutty. These facts appear.

Local 108 represents white-collar employees employed by the Library. The parties' collective negotiations agreement is effective from January 1, 2008 through December 31, 2011. The grievance procedure ends in binding arbitration.

Article II is entitled Management Rights. It provides, in part:

The Library hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitution of the State of New Jersey and of the United States, including, but without limiting the generality of the foregoing, the following rights: . . . to determine work schedules and shifts subject to prior negotiation with the Union as to compensation therefore, and to decide the number of employees needed for any particular reason.

Article V is entitled Definition of Employment and Work Week. Section A provides, in part:

1. The standard work week consists of thirty-five (35) hours. All employees, with the exception of the Director, are required to work one evening per week and every third Saturday, as part of the standard thirty-five (35) hours.

Article XVIII is entitled Savings and Separability. Section A provides, in part:

1. Except as this Agreement shall otherwise provide, all terms and conditions of employment applicable on the signing date of this Agreement to employees covered by this Agreement as established by the rules, regulations and/or policies of the Library in force on said

date, shall continue to be so applicable during the terms of this Agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce or otherwise detract from any existing employee benefit.

The grievant has been employed by the Library since October 30, 2000, as the Library Assistant/Senior Account Clerk. For the first three months of her employment, the grievant worked from 10 a.m. to 5 p.m., the same hours as other Library employees. In January 2001, the grievant requested that her work hours be changed to 8 a.m. to 3 p.m. At its January 10, 2001 Board meeting, the Library's Board of Trustees approved the request.

On October 12, 2007, the Library Director sent a memorandum to the grievant, notifying her that a recommendation had been made to the Board to change her hours to 10 a.m. to 5 p.m, and that the Board would consider the recommendation at its October 17 meeting. The memorandum cited safety concerns and the nature of the grievant's work as reasons for the change. Specifically, the Library Assistant/Senior Account Clerk must deal with vendors who do not open before 9 a.m. and must deal with other staff members who do not begin work until 10 a.m. Regarding safety, the memorandum noted that the grievant is alone in the building from 8 a.m. to 10 a.m., creating a safety issue for the Library and the grievant.

The Director also certifies that the Library Assistant/Senior Account Clerk and a Reference Librarian are the only employees on the lower level of the Library. Therefore, when one of the employees is on a break or at lunch, the other employee is responsible for the security and safety of the entire lower level. The Director certifies that continuing to permit the grievant to leave at 3 p.m. would jeopardize the Reference Librarian's safety and the security of the lower level of the Library for the last two hours of the workday. The Director also certifies that the Library Assistant/Senior Account Clerk is similarly left alone during the first two hours of the workday because all other employees begin work at 10 a.m., causing similar safety concerns.

Finally, the Director certifies that an increase in patrons and children visitors to the Library requires additional supervision of the lower level to promote safety and operational efficiency.

On November 8, 2007, the Director notified the grievant that, at its October 17 meeting, the Board approved a resolution requiring all employees to work from 10 a.m. to 5 p.m. and that the new hours would be effective December 3, 2007.

On November 21, 2007, Local 108 filed a grievance contesting the unilateral change in work hours and seeking the reinstatement of the grievant's 8 a.m. to 3 p.m. schedule. The grievance was

unresolved. The Library filed for arbitration and RWDSU indicated that it would have had the Library not done so. 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), sets the test 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]

The balancing test must be applied to the facts and argument in each case. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998). No statute or regulation is asserted to preempt.

Public employers have a managerial prerogative to determine the hours and days that a public service will be provided. Work schedules of individual employees, however, are generally mandatorily negotiable. Local 195; see also Teaneck Tp. and Teaneck Tp. FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 589 (1980); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); Burlington Cty. College Faculty Ass'n v. Burlington Cty. College, 64 N.J. 10, 12, 14 (1973).

We have applied these principles in prior cases and will look first at two of those cases and then balance the competing interests in the instant case.

In Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992), we found that a school board had a managerial prerogative to keep its library open after the teaching day had ended and to extend the starting and quitting times for school

librarians, guidance counselors, and staff developers by one-half hour. The board articulated educational reasons for the changes, including increasing students' and staff's access to the library and enabling students to meet with their guidance counselors without disrupting class time. However, so long as qualified employees were available to meet the employer's coverage needs, we held that the board did not have a managerial prerogative to determine individual work schedules unilaterally and, instead, had an obligation to negotiate over who works what hours and how much they are paid for those hours. See City of Linden, P.E.R.C. No. 92-127, 18 NJPER 362 (¶23158 1992); Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); Morris Cty. College, P.E.R.C. No. 92-24, 17 NJPER 424 (¶22204 1991); New Jersey Sports and Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (172 App. Div. 1988); see also Local 195.

In Moonachie Bd. of Ed., P.E.R.C. No. 97-13, 22 NJPER 324 (¶27164 1996), a school board hired a librarian, did not include the position in the negotiations unit, and set the librarian's hours of work and compensation outside the provisions negotiated with the association. The board asserted that the library was the only one in Moonachie and that the hours were set, after a survey of student and parent needs, to maximize the availability of library services to students. Relying on Hoboken, we held

that the board had a managerial prerogative to create the librarian position, but that -- if an arbitrator found that the title belonged in the negotiations unit -- the employee's work hours and compensation were mandatorily negotiable. We noted, however, that any arbitration award on work hours had to take into account the board's right to determine when the library would be open and its right to have qualified staff available during those hours. It was unclear if the board could determine the library's hours of operation and have qualified staff during those hours in any way other than requiring this librarian to work from 8 a.m. to 4 p.m. and we would not speculate as to a remedy.

In the instant matter, the Library has articulated operational efficiency reasons to justify the grievant's schedule change. First, the grievant's job responsibilities do not warrant an alternate work schedule. Those responsibilities include contacting vendors who do not open before 9 a.m. and dealing with other staff members who do not begin work until 10 a.m. Therefore, the Library determined that the grievant could more efficiently perform her duties during normal, operating hours. Further, the Library has experienced an increase in patrons. To meet the increased demand on its resources, the Library determined that all staff must work during the hours the Library is open to the public.

In contrast to Hoboken and Moonachie, the Library has also raised safety and minimum staffing concerns in addition to its operational efficiency arguments. The grievant was the only library employee working the 8 a.m. to 3 p.m. schedule. The grievant and the Reference Librarian are the only employees on the lower level of the Library. Therefore, when one of the employees is on a break or at lunch, the other employee is responsible for the security and safety of the entire lower level. The prior schedule resulted in leaving the grievant alone in the building from 8 a.m. to 10 a.m. and the Reference Librarian alone on the lower level from 3 p.m. to 5 p.m. This created a safety issue for the employees and a security issue for the Library. In addition, in light of the increase in patrons, the library has determined that it requires two employees on its lower level during its hours of operation.

While the grievant has an interest in maintaining her early schedule, on balance, the Library's ability to deploy its personnel to meet the governmental policy goals of increased efficiency and security outweighs Local 108's interest in negotiating a work schedule preferred by the grievant.

Therefore, arbitration of the grievance must be restrained.

Warren Cty., P.E.R.C. No. 85-83, 11 NJPER 99 (¶16042 1985); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601, 602 (¶13283 1982); see also Irvington Policemen's Benev. Ass'n 29 v. Irvington, 170

N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296
(1980).

ORDER

The request of the Oakland Public Library for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel and Watkins voted in favor of this decision. Commissioners Colligan and Voos voted against this decision.

ISSUED: April 29, 2010

Trenton, New Jersey