

P.E.R.C. NO. 2010-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUENA REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-036

BUENA REGIONAL  
SUPPORTIVE STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Buena Regional Board of Education's request for a restraint of binding arbitration of a grievance filed by the Buena Regional Supportive Staff Association. The demand for arbitration seeks compensation for employees no longer permitted to use Board vehicles for commutation purposes. The Commission finds that no statute or regulation preempts the mandatorily negotiable issue of offsetting compensation.

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. 2010-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUENA REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-036

BUENA REGIONAL  
SUPPORTIVE STAFF ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Capizola, Pancari, Lapham &  
Fralinger, attorneys (Richard A. Asselta, of counsel)

For the Respondent, Selikoff & Cohen, PA, attorneys  
(Keith Waldman, of counsel)

DECISION

On November 2, 2009, the Buena Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Buena Regional Supportive Staff Association. The demand for arbitration states that the grievance involves district vehicle use.

The parties have filed briefs. The Board has also filed exhibits and a certification. These facts appear.

The Association represents a unit that includes support staff but excludes certificated personnel. The parties' most recent collective negotiations agreement is effective from July

1, 2006 through June 30, 2009. The grievance procedure ends in binding arbitration.

In July 2008, the Board adopted a policy entitled "Vehicle Use of District Owned Vehicles." It provides, in relevant part, that district vehicles may be assigned to individuals or to organizational units for use in a pool only in accordance with certain conditions.

Before the new policy, members of the Maintenance and Grounds Departments had been permitted to take vehicles home at the end of their workday and drive them to work on the following day. In September 2008, these employees were told that, as a result of the new policy, they had to park the vehicles on Board property at the end of the work day.

The Association grieved the policy and on April 7, 2009 filed a request with the Commission for a panel of arbitrators. 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 City 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]

Where a statute or regulation is alleged to preempt a negotiable term and condition of employment, the law or rule must do so expressly, specifically and comprehensively. See State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978); Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982).

The Board asserts that its adoption of the policy was required in order to comply with new Department of Education regulations concerning fiscal accountability. It further asserts that its policy tracks the regulation's requirements about who can and cannot be assigned a vehicle.

The Association responds that it is not suggesting that the Board disregard the newly-enacted regulation and risk losing State aid. It understands that the Board had to act to restrict use of vehicles. However, it argues that the impact of the loss of the use of vehicles for commuting purposes is mandatorily negotiable and therefore legally arbitrable.

The Board replies that the Association has not filed any exhibits or certifications supporting its impact claims and that therefore the allegations are unfounded and without any support. In addition, the Board argues that all negotiations concerning this matter are preempted. In the alternative, the Board argues that even if not preempted, the impact issues should be non-negotiable because the purpose of the regulations is to limit spending by school districts and negotiations over impact would significantly interfere with that policy determination.

N.J.A.C. 6A:23A-6.12 states that:

(a) Each school district and county vocational board shall adopt a policy or policies regarding district vehicle assignment that will ensure compliance with this section, in accordance with OMB Circular 08-16-ADM or any superseding circulars.

OMB Circular 10-05-ADM supersedes 08-16-ADM. Nothing in the regulation or the current circular addresses the impact of the loss of the ability to commute. Accordingly, the impact issue is not preempted under State Supervisory.

The next question is whether, since the regulation was designed to promote fiscal responsibility, negotiations over any impact issues would significantly interfere with the determination of governmental policy under Local 195. That question was answered by this Commission and the Appellate Division in Morris Cty. and Morris Cty. Park Commission, P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd 10 NJPER 103 (¶15052 App. Div. 1984), certif. den. 97 N.J. 672 (1984). A public employer has a managerial prerogative to end the use of employer-owned vehicles for commutation purposes. The fact that a regulation prompted this employer to exercise that prerogative does not change that analysis. As in Morris, we must separately determine whether an agreement over offsetting compensation for the loss of use of a vehicle is mandatorily negotiable. No statute or regulation prohibits offsetting compensation. And such an agreement would not significantly interfere with the Board's prerogative to end commutation in its vehicles. Compare, for example, the negotiability of severance pay after the exercise of the managerial prerogative to lay off for fiscal reasons. State of New Jersey (Office of Employee Relations),

P.E.R.C. No. 89-137, 15 NJPER 421 (¶20175 1989), aff'd in part. part NJPER Supp.2d 241 (¶200 App. Div. 1990).

The Board's reliance on Hardyston Tp. Bd. of Ed., P.E.R.C. No. 2010-8, 35 NJPER 291 (¶101 2009), is misplaced. In that case, a statute and regulation specifically set the mileage reimbursement rate and preempted negotiations over a different rate. Here, a regulation requires the Board to adopt a policy prohibiting commutation in Board vehicles. It does not prohibit an agreement over offsetting compensation. Whether the Board has an obligation to negotiate over or pay offsetting compensation is a question that goes to the merits of the grievance and is outside our limited scope of negotiations jurisdiction.

ORDER

The request of the Buena Regional Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: April 29, 2010

Trenton, New Jersey