

P.E.R.C. NO. 2012-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UPPER TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2011-070

UPPER TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment relations Commission grants the request of the Upper Township Board of Education to restrain arbitration of a grievance filed by the Upper Township Education Association. The grievance contests a directive that employees indicate the time they sign in and sign out of work. The Commission holds that the Board has a managerial prerogative to implement and maintain time keeping procedures.

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, Taylor, Whalen, & Hybbeneth, Labor Relations Consultants (William F. Hybbeneth, Jr., on the brief)

For the Respondent, Thomas G. Myers, NJEA UniServ Representative

DECISION

On March 28, 2011, the Upper 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 Upper Township Education Association. The grievance contests a directive that employees indicate the time they sign in and sign out of work. We grant the restraint of arbitration.

The Board has filed briefs, exhibits and a certification. The Association has filed a letter brief. These facts appear.

The Association represents the Board's non-supervisory teaching staff members, secretarial/clerical employees and instructional aides. The parties' collective negotiations

agreement, effective from July 1, 2005 to June 30, 2009, contains a grievance procedure which ends in binding arbitration.^{1/}

Article VIII:A.1 provides:

As professionals, teachers are expected to devote to their duties the time necessary to meet their responsibilities. All teachers are expected to initial the sign-in/sign-out roster.

In a July 10, 2010 e-mail to building principals and their secretaries titled "Attendance Procedures" the Business Administrator/Board Secretary advised; "As always all employees must sign-in upon arrival and sign-out upon departure."

On September 24, 2010 the Association filed a grievance asserting that the sign-in/sign-out requirement violated Article VIII:A.1. and seeking its rescission. The grievance was denied in turn by the Superintendent and the Board, and 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, 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

^{1/} The parties extended the agreement through June 30, 2010.

the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we cannot consider the merits of the grievance or any contractual defenses the employer may have.

The Board claims a managerial prerogative to require employees to sign in and sign out citing Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 135 N.J. Super. 269 (Ch. Div. 1975), aff'd 142 N.J. Super. 44 (App. Div. 1976) and other cases.^{2/}

The Association's letter brief concedes that the Board may institute and maintain a sign-in/sign-out procedure. It goes on to extrapolate that the Board might decide at some time in the future that sign-in/sign-out might be mandated after every teaching period. It also points out that staff members have electronic swipe cards to ingress and egress from school buildings and that teachers have been issued computers by the Board that have the capability to track their whereabouts both during duty time and while they are not working.

The Association's grievance challenges only the sign-in/sign-out procedure. The grievance does not present any issue as to whether the computer software invades employee privacy.

2/ Town of Pennsauken, P.E.R.C. No. 80-51, 5 NJPER 486 (¶10248 1979); Butler Bor. P.E.R.C. No. 94-51, 19 NJPER 587 (¶24281 1993); North Bergen Bd. of Ed., P.E.R.C. No. 92-5, 17 NJPER 378 (¶22177 1991); Bergen Cty. Utilities, P.E.R.C. No. 84-52, 9 NJPER 678 (¶14296 1983).

An employer has a managerial prerogative to implement and maintain time-keeping procedures.^{3/} Our decisions on similar issues have consistently followed the cases cited by the Board. The courts have also reached the same result. See Galloway, supra. In Chabak et. al v. City of Plainfield Bd. of Ed., NJPER Supp.2d. 29, 30 (¶19 App. Div. 1974), certif. den. 66 N.J. 327 (1974), the Court ruled:

The matters of where teachers shall be required to sign in and sign out and whether they shall be required to write their full names or initials can hardly be characterized as matters of major educational policy. We do believe, however, that they fall into the category of managerial prerogatives. . . . Such requirements have at most a minimal effect upon the terms and conditions of employment.

We therefore restrain arbitration.

ORDER

The Board's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: April 26, 2012

Trenton, New Jersey

^{3/} Whether there are redundant and back-up methods to monitor the presence of staff during their work hours is also a managerial issue left to the discretion of the employer.