

P.E.R.C. NO. 2015-65

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET HILLS BOARD  
OF EDUCATION,

Petitioner,

Docket No. SN-2014-110

-and-

SOMERSET HILLS  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Somerset Hills Board of Education for a restraint of binding arbitration of a grievance filed by the Somerset Hills Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement by assigning duties to para-professional employees that are normally performed by clerical employees. The Commission finds that where there is no issue of qualifications or skills present, a claim that security check duties should have been assigned to secretaries rather than para-professionals, if sustained, would not significantly interfere with any major educational policy.

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, Adams, Gutierrez &  
Lattiboudere, attorneys (Derlys Maria  
Gutierrez, of counsel)

For the Respondent, Oxfeld Cohen, attorneys  
(William P. Hannan, of counsel)

DECISION

On June 25, 2014, the Somerset Hills Board of Education petitioned for a scope of negotiations determination. The Board seeks to restrain arbitration of a grievance filed by the Somerset Hills Education Association. The Association's grievance asserts that the Board violated the parties' collectively negotiated agreement (CNA) by assigning duties to para-professional employees that are normally performed by clerical employees. The parties have filed briefs, certifications and exhibits. These facts appear.

The Association represents a collective negotiations unit of both certificated and non-certificated Board employees including secretaries and para-professionals. The Board and the Association are parties to a CNA in effect from July 1, 2011 through June 30, 2014. The grievance procedure ends in binding arbitration for alleged violations of the specific terms of the agreement, with certain exceptions listed in the CNA.

The Board operates an elementary school, a middle school and a high school. The Superintendent of Schools certifies that, during the 2013-2014 school year, visitors to the elementary school were observed walking freely through the school building after being "buzzed in by a staff member." In response, in December 2013, a duty assignment was established to have a staff member "buzz-in" visitors, have them sign a log book, and direct them to the school's main office. This assignment was given to a para-professional.

The President of the Association certifies that the same duty assignment also exists at the middle school and the high school and was performed by secretaries. He asserts that secretaries also performed that duty at the elementary school before the para-professional was stationed there.

On January 9, 2014, the Association filed a grievance asserting that the "security check" duty had been inappropriately assigned to para-professionals and that the work should be done

by secretaries. The grievance was denied at the subsequent steps of the procedure and on May 8, 2014, the Association demanded arbitration. This petition ensued.<sup>1/</sup>

Our jurisdiction is narrow. We consider the negotiability of the issues raised by the dispute that are challenged in the petition. We express no opinion about the contractual merits of the grievance or any contractual defenses the Township may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards 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.

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<sup>1/</sup> The Association's submissions also assert that other secretarial work has been wrongly assigned to para-professionals. As the Board's petition lists only the security check duty, we limit our ruling to that issue.

The Board asserts that its assignment of the security check duty to para-professionals is within, or incidental to, their duties as set forth in Article XV of the CNA. In addition, it notes that Article XV.A.2. provides: "Administrators can assign duty periods [to para-professionals] as needed. These assignments are non-arbitrable." The Board argues, citing In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 24-25 (App. Div. 1977), that as the assignment relates to school and student safety it is not mandatorily negotiable. Finally the Board asserts that the Association's demand for arbitration was not timely filed.

The Association responds that an employer may only assign new job duties to an existing position if they are incidental to or comprehended within an employee's job description and normal tasks. It contends that the security check assignment is not contemplated by the duties of either category of para-professionals.<sup>2/</sup> It notes that the para-professionals receive an hourly salary that was negotiated in light of their duties as set forth in the CNA and that the extra assignment takes unfair advantage of them.

Given our limited jurisdiction we decline to determine whether the demand for arbitration was timely filed. That issue

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<sup>2/</sup> The Board employs "Special Educational/Instructional Para-Professionals," who provide support services to students with disabilities, and "Regular Para-Professionals" who assist classroom teachers and also provide supervision in the library, playground and cafeteria.

is for the arbitrator as is the Board's claim that Article XV.A.2 prevents a challenge to a work assignment given to a para-professional from being arbitrated.

The Supreme Court has held that negotiability determinations should be made on a case-by-case basis taking into account the particular facts and context of the dispute. See Troy v. Rutgers, 168 N.J. 354, 384 (2001); Jersey City and POBA and PSOA, 154 N.J. 555, 574 (1998). Thus the Board's statement that it made the contested assignments for security reasons, is not the sole determinative factor.

In disputes over duty assignments, a pertinent issue is often whether the contested work is part of, or incidental to, the employees' normal job duties. In Byram, a proposal that teachers be permitted to maintain a duty free lunch, even in bad weather and other emergencies, was not mandatorily negotiable because teacher job duties inherently included helping to protect the safety and security of pupils under their supervision. 152 N.J. Super. at 24-25. But, in the same case, the Court held that relieving teachers from classroom maintenance tasks (cleaning, moving furniture) was not incidental to their normal jobs and thus a contract proposal so providing was mandatorily negotiable. 152 N.J. Super. at 25-26.

In this case, by assigning the security check duties to both secretaries and para-professionals, the Board is implicitly

recognizing that the work is part of or incidental to the duties of both jobs, while the Association asserts that it has been and should continue to be performed by secretaries. As it is undisputed that the security checks were assigned to both para-professionals and secretaries, the Board's interest in insuring that the employees performing the work have the qualifications and skills needed for the assignment is not a factor in this dispute.

Thus, a claim that secretaries, rather than para-professionals, should have been assigned the security check duty at the Board's elementary school, if sustained, would not significantly interfere with any major educational policy. Our determination does not prevent the Board from arguing to the arbitrator that the arbitration demand was untimely or that the contract (e.g. Article XV.A.2) specifically excludes the grievance from resolution through binding arbitration.

ORDER

The request of the Somerset Hills Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall was not present.

ISSUED: April 23, 2015

Trenton, New Jersey