

P.E.R.C. NO. 2021-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2020-048

TEAMSTERS LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of Local 97's grievance contesting the Board's transfer of a school law enforcement officer from a high school to a middle school for the 2019-2020 school year. Finding that N.J.S.A. 34:13A-25 specifically preempts negotiations over non-disciplinary transfers of school district employees and that Local 97 does not allege the transfer was disciplinary, the Commission holds that the transfer is not legally arbitrable.

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, Schenck, Price, Smith & King, LLP, attorneys (Marc H. Zitomer, of counsel and on the brief; Christopher J. Sedefian, of counsel and on the brief)

For the Respondent, Mets Schiro & McGovern, attorneys (James M. Mets, of counsel and on the brief; Brian J. Manetta, on the brief; Nicholas G. Kiriakatos, on the brief)

DECISION

On March 10, 2020, the Jackson Township Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 97 (Local 97).<sup>1/</sup> The grievance alleges that the Board violated the parties' collective negotiations agreement (CNA) when it transferred a school law enforcement officer from

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1/ An alternative draft on the Board's petition was presented to the Commission at its October 15, 2020 meeting, but was not approved by the majority of the Commissioners.

Jackson Memorial High School to Christa McAuliffe Middle School for the 2019-2020 school year without just cause.

The Board filed briefs, exhibits, and the certifications of its Director of Security, Raymond Milewski and its Assistant Superintendent of Schools, Daniel Baginski. Local 97 filed a brief and the certifications of the grievant and its counsel, Nicholas G. Kiriakatos. These facts appear.

Local 97 represents all of the Board's full-time and part-time mechanics and utility workers, school law enforcement officers, food service workers, custodians, and grounds workers. The Board and Local 97 are parties to a CNA in effect from July 1, 2017 through June 30, 2020. The grievance procedure ends in binding arbitration.

Article XIX.A.3. of the CNA provides:

When any position becomes available, preference in filling such vacancy will be given to senior regular permanent Employees who bid for the open position and are qualified for such position consistent with controlling decisional law.

After retiring from his career as a Middlesex County Corrections Officer, the grievant began working for the Board as an unarmed school law enforcement officer. Prior to the 2019-2020 school year, the grievant had been assigned to Jackson Memorial High School (Memorial) for approximately five years. On August 8, 2019, Milewski advised the grievant that he was being transferred from Memorial to Christa McAuliffe Middle School

(McAuliffe) for the 2019-2020 school year. The transfer caused a shift in the grievant's work schedule from 6:30 a.m. - 2:30 p.m. to 7 a.m. - 3 p.m, but did not increase his hours.

Milewski certifies that as part of a reorganization following the hiring of six additional security officers in 2018, approximately five security officers were transferred between schools, including the grievant. The opening at McAuliffe resulted from the Board's transfer of one of the district's armed security officers to a district elementary school. Milewski certifies that McAuliffe is a feeder school to Jackson Liberty High School (Liberty). He certifies that McAuliffe was having significantly more incidents leading to student suspensions than Goetz Middle School, and Liberty was having significantly more disciplinary issues than Memorial (where the grievant worked prior to his transfer). Due to those disciplinary issues, Milewski "felt it imperative to place an experienced security officer at McAuliffe with the ability to handle the climate and issues that were prevalent there" and one who "was capable of addressing and resolving these disciplinary issues at McAuliffe so as to minimize the carryover and continuing effect of those problems on Liberty."

Milewski certifies that the grievant was one of the most experienced security officers in the school district. He certifies that he was pleased with the grievant's performance,

work ethic, and communication skills at Memorial. Milewski certifies that the grievant's personality was a good match with McAuliffe's other security officer. He certifies that he transferred the grievant to McAuliffe because he was the ideal fit for McAuliffe based on his experience and his ability to meet the needs of the school. Milewski certifies that the grievant had positive annual reviews and that he was not reprimanded for any conduct that prompted his transfer.

The grievant certifies that he did not bid for the position at McAuliffe and that he believes there were less senior officers who could have been assigned to the post. He certifies that in late 2018, he applied for the Board's armed school law enforcement officer positions because he met all the criteria and the position would pay more. He certifies that Milewski said he could not hire the grievant for an armed position and asked him to remain in his position at Memorial. The grievant stated his intent to file a grievance over not being hired for an armed position based on his belief that the Board was discriminating against former corrections officers. He certifies that four other Local 97 unit members applied for the armed position but that he had the most seniority. He certifies that Milewski stated that he was more of an asset at the high school and asked him not to file a grievance.

On September 9, 2019, Local 97 filed a grievance alleging that the grievant was transferred from Memorial to McAuliffe without just cause. The grievance seeks that the transfer be rescinded. On September 17, the Board held a grievance hearing. On September 18, the Business Administrator denied the grievance. On October 4, Local 97 filed a request for binding grievance 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 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), 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.

[Id. at 404-405.]

The Board asserts that arbitration should be restrained because it has a non-negotiable managerial prerogative to transfer the grievant based on its assessment that his qualifications and abilities suit the security personnel needs of the McAuliffe school. The Board argues that it considered the grievant's experience ideal for the position at McAuliffe because of its greater number of serious disciplinary infractions compared to other district schools. It asserts that Director of Security Milewski determined the grievant could immediately handle the responsibilities of the climate at McAuliffe because he is hard-working, a good communicator, and a good match to work with McAuliffe's other security officer.

Local 97 acknowledges that the grievant's transfer was not disciplinary. However, it argues that his transfer violated a contractual seniority preference clause, Article XIX.A.3., that should allow the grievant to remain in his position at Memorial

instead of being involuntarily reassigned to McAuliffe. Local 97 contends that the Board has not alleged that the grievant was the only employee qualified to work in the position at McAuliffe. Citing Franklin Tp. Bd. of Ed., P.E.R.C. No. 2005-18, 30 NJPER 408 (¶133 2004) and South Hunterdon Reg'l Bd. of Ed., P.E.R.C. No. 2013-67, 39 NJPER 460 (¶146 2013), Local 97 argues that the Board should have determined if a pool of equally qualified candidates was available and then decided who to transfer using seniority preference. Local 97 also alleges that the transfer was retaliation for stating he would file a grievance over not being hired for an armed officer position, which violates section 5.4a(3) of the Employer-Employee Relations Act (Act).

This case triggers the second prong of the Local 195 test in that the Board's decision to transfer the grievant is preempted by a statute--N.J.S.A. 34:13A-25. To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44; State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 - 82 (1978).

N.J.S.A. 34:13A-25 provides as follows:

Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons.



This statute is applicable only to employees of "any local or regional school district", and therefore would be applicable to the grievant who is a school law enforcement officer employed by the Board. N.J.S.A. 34:13A-22. The "express, specific, and comprehensive" language of N.J.S.A. 34:13A-25 provides that absent a transfer being made for disciplinary reasons, the transfer of a school employee is not mandatorily negotiable.

In New Brunswick Educ. Ass'n. v. New Brunswick Bd. of Educ., 2007 N.J. Super. Unpub. LEXIS 328, the Appellate Division held that:

N.J.S.A. 34:13A-25 provides in pertinent part that boards of education may transfer employees between work sites and that such transfers "shall not be mandatorily negotiable except an employer shall not transfer employees for disciplinary reasons." The discretion to transfer employees for non-disciplinary reasons, therefore, lies solely within the authority of the Board. Ridgefield Park Educ. Ass'n v. Ridgefield Park Bd. of Educ., 78 N.J. 144, 162, 393 A.2d 278 (1978)."

Consistent with the Appellate Division, the Commission has held that grievances contesting non-disciplinary transfers of school employees between work sites are not legally arbitrable due to N.J.S.A. 34:13A-25. Asbury Park Bd. of Ed., P.E.R.C. NO. 2016-27, 42 NJPER 230 (¶65 2015); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2001-39, 27 NJPER 94 (¶32035 2001). Local 97 does not dispute the Board's assertion that the grievant was not transferred for disciplinary reasons. Therefore, N.J.S.A.

34:13A-25 preempts arbitration of the Board's decision to transfer the grievant from Memorial High School to McAuliffe Middle School. Franklin Tp.

Bd. of Ed., P.E.R.C. No. 2005-18, supra, and South Hunterdon Reg'l Bd. of Ed., P.E.R.C. No. 2013-67, supra, relied on by Local 97, addressed whether certain contract clauses pertaining to transfers of school employees were mandatorily negotiable. Neither of those cases addressed the applicability of N.J.S.A. 34:13A-25, and therefore they are not pertinent to this dispute. Finally, to the extent that Local 97 asserts that the grievant was transferred for protected activity (i.e. for stating his intent to file a grievance for not being hired for the armed officer position) that claim is not properly presented as part of a scope petition and must be filed as an unfair practice charge pursuant to N.J.S.A. 34:13A-5.4(3). In re Bridgewater Tp., 95 N.J. 235 (1984).

ORDER

The request of the Jackson Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Papero and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself.

ISSUED: December 10, 2020

Trenton, New Jersey