

P.E.R.C. NO. 2024-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST MILFORD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2023-042

WEST MILFORD BUS DRIVERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, the Board's request for restraint of binding arbitration of the Association's grievance, alleging that the Board violated the parties' collective negotiations agreement and past practice by requiring bus drivers to fuel their buses. The Commission finds the Board has a managerial prerogative to assign bus drivers fueling duties, as those duties are incidental and comprehended within the bus drivers' normal duties. The Commission, however, further finds the grievance legally arbitrable to the extent it asserts a contractual violation regarding safety training, gloves and additional compensation for the fueling duties.

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
(Andrew B. Brown, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(William P. Hannan, Esq., on the brief)

DECISION

On June 5, 2023, the West Milford Board of Education (Board or District) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the West Milford Bus Drivers' Association (Association). The grievance alleges that the Board violated the parties' collective negotiations agreement (CNA) and past practice by requiring bus drivers to fuel their buses.

The Board filed briefs, exhibits and the certification of the Supervisor of Transportation, Karen Barriero. The Association filed a brief.^{1/} These facts appear.

^{1/} The Association did not file a certification. N.J.A.C.
(continued...)

The Association represents all of the Board's full-time, part-time and probationary bus drivers and vehicles aides, exclusive of supervisory personnel. The Board and Association are parties to a CNA with a term of July 1, 2017 through June 30, 2022, which continues in effect. The grievance procedure ends in binding arbitration.

The CNA's Article 7 ("Route Assignments"), provides in pertinent part:

B. All contractual drivers will receive a "Route Assignment Contract" which will include built-in time allocations for a.m. vehicle pre-check time and include a p.m. built-in time for fueling, maintenance reports, bus interior cleaning and pupil discipline reports.

The CNA's Article 10 ("Rules and Regulations") provides:

It is understood and agreed that the provisions of the Rules and Regulations of the Board including School Bus Drivers' Handbook, now in effect shall be binding on parties hereto, except to the extent that any specific provision thereof may be superseded by a specific provision or provisions of this agreement, in which event this agreement shall control. The Board agrees to provide each driver with a copy of the School Bus Drivers' Handbook.

The School Bus Drivers' Handbook (Handbook) provides in relevant part:

Diesel and Gasoline Fueling:

1/ (...continued)
19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

Fuel pumps will be on from 7 AM until 11:30 AM. If you need fuel before or after the scheduled time, permission can only be given from the Chief Mechanic or Supervisor. Drive through the pump area only if you need fuel. Diesel buses shall NOT be left unattended when fueling. STAY WITH YOUR BUS! Drivers have been known to drive off, leaving the nozzle in the tank. Therefore, no drivers are permitted to fuel their own vehicles. Fluid levels are not to be checked by garage staff with each fueling. FUEL GATE IS NOT AN EXIT FROM LOT.

[Emphasis in original].

The Bus Drivers' job description provides, in pertinent part:

11. Performs interior bus cleaning duties daily, cleans windows and exterior as needed, and refuels the vehicle when at half (4) full or lower.

The Supervisor of Transportation certifies to the following facts. On January 17, 2023, she received the Association's grievance regarding the District's decision to require bus drivers to refuel their buses. The Association's grievance states:

NATURE OF THE GRIEVANCE:

The bus drivers are being required to pump their own gas for the buses. This is a violation of past practice. The driver's job description says drivers refuel their buses and that has always meant drivers pull up to the pumps and a mechanic always

refueled (for many, many years) and then a fuel technician was hired to do it. It is also a violation of the Handbook which says (p. 28) "no drivers are permitted to fuel their own vehicles," and it's a violation of any other contractual language, policies + statutes which may apply. In addition, it also represents a change to the terms and conditions of employment.

REMEDY SOUGHT:

1. The directive for drivers to pump their own gas will be withdrawn immediately; OR
2. In the event that drivers are required to pump gas, they will receive the following:
 - a. A yearly stipend - to be determined;
 - b. Access to disposable gloves each time they pump gas;
 - c. Yearly training on how to pump gas safely.

The Supervisor of Transportation has been employed by the District since 1998. When she began and until 2012, drivers were required to fuel their own buses. In 2012, the Board hired the Fuel Technician. The individual holding that position went out on leave earlier this year.

The Board denied the grievance, and the Association filed a Request for Submission of Panel of Arbitrators on June 1, 2023. 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 contractual merits of the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Board argues that its request for a restraint of binding arbitration of the Association's grievance should be granted because it is well-established that a public employer has a non-negotiable managerial prerogative to assign or modify employees' duties that are included in or incidental to the employees' job description. The Board asserts that although the drivers had not been recently required to fuel their own busses, they were required to do so in the past, and their job description expressly includes the duty of refueling their busses. Moreover, the Board argues that although the Handbook does not permit the drivers to refuel their own busses, it does not state that drivers will not be required to refuel their busses when directed to do so by the Board. Additionally, the Board cites the CNA's inclusion of "built-in time for fueling" in Article 7 as indicating that the drivers are responsible for fueling their busses.

The Association argues that its grievance is arbitrable because there are factual determinations and contractual interpretations that must be made by an arbitrator. Namely, the Association asserts that the requirement that drivers refuel their busses always meant that the drivers would pull up to the pumps and have a mechanic refuel the bus. The Association disputes (without a certification) the Board's factual assertion that the drivers prior to 2012 would refuel their busses. The

Association argues that an arbitrator must make a contractual interpretation as to what the parties meant by fueling/refueling in the CNA, Handbook, and Job Description based on the parties' past practice. The Association further argues that even if the Commission restrains arbitration over the assignment to the bus drivers to fuel their busses, it must permit arbitration over the connected issues of health, safety, and compensation that were raised in the grievance.

In its reply brief, the Board responds to the Association's health and safety concerns by asserting that it does not dispute that these concerns are mandatorily negotiable and that it has already agreed to provide the requested safety equipment (i.e. gloves) and annual training. However, the Board maintains that the Association's compensation claims must be restrained because the drivers workday has not been extended by the refueling requirement, and the fueling requirement must be accomplished during the drivers' normal workday.

A public employer has a managerial prerogative to assign new duties if they are incidental to or comprehended within an employee's job description and normal duties. N.J. Highway Auth. v. IFPTE Local 193 Toll Supervisors of Am., No. A-6397-01T3, 2003 N.J. Super. Unpub. LEXIS 20 (App. Div. June 16, 2003), aff'g, 29 NJPER 276 (¶82 App. Div. 2003)); see, e.g., Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984) (bus drivers

required to pump gas); North Caldwell Bor., P.E.R.C. No. 2010-51, 36 NJPER 10 (¶4 2010) (police officers may be assigned to dispatcher duties); Town of Harrison, P.E.R.C. No. 2002-54, 28 NJPER 179 (¶33066 2002) (firefighters required to respond to both EMS and dispatch calls during a given shift); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) (fire officers required to perform crossing guard or patrol duties connected to fires); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982) (firefighters required to go on fire patrols).

In Monroe Tp. Bd. of Ed, supra, a case with almost identical facts to the facts herein, the Commission restrained binding arbitration of the Association's grievance challenging the assignment of refueling duties to school bus drivers, a task that had historically been done by a mechanic. Likewise here, we find that the Board has a managerial prerogative to assign bus drivers fueling duties, as those duties are incidental and comprehended within the bus drivers' normal duties. N.J. Highway Auth., supra. The factual record establishes that fueling duties are part of the drivers' job description. The Board's Supervisor of Transportation certifies that prior to 2012, the drivers had performed fueling duties, an assertion the Association does not refute with its own certification. Additionally, Article 7B includes built in time for fueling. The Association asserts that the "fueling" referred to in the record means a third party

fueling the busses. However, even applying a definition of fueling to mean that the bus drivers themselves fuel the busses, we still find that such duties are incidental and comprehended within the bus drivers' normal duties. Finally, we note that the Handbook's prohibition against drivers fueling their own busses does not divest the Board of its managerial prerogative to assign such duties.

In Monroe Tp. Bd. of Ed., supra, the Commission permitted binding arbitration to the extent the grievance claimed safety and compensation issues relating to fueling duties. Likewise here, we find the grievance legally arbitrable to the extent it asserts a contractual violation regarding safety training, gloves and additional compensation for the fueling duties, claims for which the Association shall be left to its burden of proof in arbitration. Additionally, the Board's defense that gloves and safety training have already been provided, and that Association members are not working more hours as a result of fueling duties may be raised to the arbitrator.

For all the foregoing reasons, we find that the issue of Board's assignment of fueling duties to bus drivers is not legally arbitrable, but the issues of safety training, gloves and additional compensation for the fueling duties are legally arbitrable.

ORDER

The West Milford Board of Education's request for a restraint of binding arbitration is granted to the extent the grievance challenges the assignment of fueling duties to school bus drivers. The Board's request for a restraint of binding arbitration is denied to the extent the grievance seeks safety training, gloves and compensation related to fueling duties.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Higgins, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford recused himself.

ISSUED: October 26, 2023

Trenton, New Jersey