

P.E.R.C. NO. 94-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-95

CITY ASSOCIATION OF SUPERVISORS AND
ADMINISTRATORS, A.F.S.A., AFL-CIO,
LOCAL 20,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the City Association of Supervisors and Administrators, A.F.S.A., AFL-CIO, Local 20 against the Newark Board of Education. The grievance alleges that the Board violated the parties' collective negotiations agreement when it required employees in CASA's unit who did not report to work on the two days after a blizzard to use paid leave and when it refused to pay additional compensation to unit members who came to work on those days. The Commission finds that the essence of this grievance centers on the compensation to be received by employees who reported to work and those who did not.

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Appearances:

For the Petitioner, Marvin L. Comick, General Counsel
(Robin T. McMahon, Associate Counsel)

For the Respondent, Anthony P. Sciarillo, attorney

DECISION AND ORDER

On April 22, 1993, the Newark Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators, A.F.S.A., AFL-CIO, Local 20 ("CASA"). The grievance alleges that the Board violated the parties' collective negotiations agreement when it required employees in CASA's unit who did not report to work on the two days after a blizzard to use paid leave and when it refused to pay additional compensation to unit members who came to work on those days.

The parties have filed a exhibits and briefs. These facts appear.

CASA represents a unit of approximately 400 administrators and supervisors. The parties entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1994. The grievance procedure ends in binding arbitration. Article X, School Year, School Days and Holidays, Section C provides:

Whenever any individual member of the bargaining unit, upon the request and approval of the Executive Superintendent or the Board, shall have rendered any days of service which days are over and above such days of service as are required of all other Personnel in that category, such additional days of service shall be compensated at the appropriate daily rate.

Article XII, 1, Rules, Practices and Renegotiations provides:

The Board shall make no changes in existing Board rules, regulations, policies, or practices relating to the wages, hours and terms of employment of the Personnel, not specifically covered by this agreement, without prior review with and agreement with CASA, provided that any existing rule, regulation, policy, or practice in conflict with the provisions of this agreement shall be deemed amended or superceded by such provision, as the case may be.

Article XXI, Matters Not Covered, provides:

Section A. Any previously adopted policy, rule, or regulation of the Board which is in conflict with any of the provisions of this agreement shall be superceded and replaced by the application provision of this agreement.

Section B. The Board agrees that it will make no change in existing Board policy or practice related to employee wages, hours, and conditions of employment and not specifically covered by this agreement without prior negotiation with CASA.

Board Circular 108, Emergency Closing of Schools, dated March 18, 1983, provides, in part:

Section IV

- A.1. School administrators are encouraged to report to their school....
- 2. All school security personnel, head custodians, custodial firemen and firemen are required to be at their stations....
- C. Central Office Staff (Instructional and Non-Instructional): All Central Office staff, both instructional and non-instructional are expected to report to work unless otherwise notified.
- D. Repair and Maintenance Division: Mechanics assigned to the Repair and Maintenance Division will report....
- E. Motor Transportation Personnel: Personnel in the Motor Transportation Division are required to report to work.
- F. Warehouse Personnel: All warehouse personnel are expected to report to work unless otherwise notified.

In January 1987, certain administrators who did not report for work when schools were closed for snow were docked pay. CASA arbitrated a grievance contesting the application of Board Circular 108, IV C. An arbitration panel found that the Board's use of the words "are expected to report" rather than "will report" or "are required to report" implied an anticipation that something would happen, not a mandate. The panel ordered the Board to reimburse all 12-month CASA employees of the Central Office who were docked or who were charged a vacation, sick or personal day.

On May 26, 1992, the Board revised its Emergency Closing Policy. On Monday and Tuesday, March 15 and 16, 1993, Newark schools were closed after a weekend blizzard hit New Jersey. Teachers and other 10-month employees were not required to report. However, the Board's administrative office remained open. Most of the twelve-month employees in CASA's unit are assigned to that office. The Board submitted a list of the 91 such employees; that list showed that on Monday, 29 employees reported to work, 52 used various forms of paid leave, and 10 claimed a snow day, and on Tuesday, 52 reported to work, 30 used various forms of paid leave, and 9 claimed a snow day. According to CASA, employees who contacted their supervisors received conflicting instructions about whether to report to work and whether they had to use available leave if they stayed home.

On March 26, 1993, CASA filed a grievance alleging violations of the contract, the parties' past practice and a past arbitration award. CASA seeks to recoup leave allowances and docked pay for employees who did not report to work. The grievance also seeks additional compensation for employees who worked. The Board denied the grievance and CASA demanded binding arbitration. This petition ensued.

The Board asserts that deciding whether to keep its administrative office open during inclement weather is a governmental policy decision. CASA contends that the dispute is

over work hours and involves no educational policy determinations since schools were closed.

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 this grievance. We specifically do not address whether the Board had a contractual obligation to grant administrative employees paid "snow days" when schools were closed or to pay extra compensation to those employees who reported for work. A 1987 grievance won by CASA may go to the merits of this grievance, but it does not affect whether this grievance is mandatorily negotiable.

While a public employer has a right to determine when to offer governmental services, the work schedules of individual employees are severable and mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973). Disputes over work schedules may be submitted to binding arbitration where the result would not significantly interfere with a school board's ability to

implement an educational goal. Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980). Similarly, the issues of when and if employees should receive paid time off or extra compensation for time worked are severable from an employer's decision to offer services. Vacation, sick and personal days as well as premium pay for work performed when others are excused are just some of the different forms of compensation available to employees through the collective negotiations process. See, e.g., Woodbridge Tp. P.E.R.C. No. 88-88, 14 NJPER 250 (¶19093 1988) (extra compensation for emergency snow holiday granted to other employees is mandatorily negotiable); Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981) (compensatory time for employees who must work when others are excused by executive order is mandatorily negotiable)

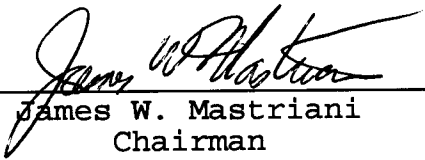
Although related to a challenge to a Board policy of requiring certain administrative personnel to report during inclement weather,^{1/} the essence of this grievance centers on the compensation to be received by employees who reported to work and those who did not. Those compensation claims are mandatorily negotiable and may proceed to binding arbitration. Compare East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

^{1/} It appears that another grievance was filed in August 1992 regarding the establishment of the Board's policy, but that arbitration hearing dates have not yet been set and no scope of negotiations petition has been filed.

ORDER

The request of the Newark Board of Education for a restraint of binding arbitration with respect to these compensation issues is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan abstained from consideration.

DATED: January 24, 1994
Trenton, New Jersey
ISSUED: January 25, 1994