P.E.R.C. NO. 2000-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY COMMUNITY COLLEGE,

Petitioner,

-and- Docket No. SN-2000-6

SUSSEX COUNTY COMMUNITY COLLEGE
FACULTY FEDERATION, AFT, LOCAL 4780,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Sussex County Community College for a restraint of binding arbitration of a grievance filed by the Sussex County Community College Faculty Federation, AFT, Local 4780. The grievance contests a directive changing the parking areas for faculty. The Commission concludes that parking for employees is a mandatorily negotiable term and condition of employment, but the employer's decision to reserve up to 45 of the 750 available spaces for handicapped parking is not mandatorily negotiable. However, the Commission finds, under the facts presented, the issue of whether the College could comply with its contractual obligations concerning faculty parking is not preempted by the federal and state mandates, or the policy decision to provide additional handicapped parking.

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, Jackson, Lewis, Schnitzler & Krupman, attorneys (James J. Gillespie, on the brief)

For the Respondent, Dwyer & Canellis, P.A., attorneys (Brian Miller Adams, on the brief)

DECISION

On July 9, 1999, Sussex County Community College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by the Sussex County Community College Faculty Federation, AFT, Local 4780. The grievance contests a directive changing the parking areas for faculty.

The parties have filed briefs and exhibits. The College has filed a certification of its Disabilities Assistance Program Coordinator. These facts appear.

The Federation represents all regularly employed faculty and librarians. The College and the Federation are parties to a collective negotiations agreement effective from June 1, 1996

through May 31, 1999. The grievance procedure ends in binding arbitration.

Article VIII, Section C is entitled Parking Facilities. It provides:

> Two parking areas, designated exclusively for employees, adjacent to Buildings A, B, and D shall be available for faculty use at no charge.

Prior to January 1999, the College completed a capital improvement project that increased the number of parking spaces to 750, more than twice as many as before.

In January 1999, the College limited parking in areas adjacent to buildings A, B and D to persons with handicaps and disabilities. According to the College, to comply with Americans with Disabilities Act ("ADA"), it needed to set aside two percent of its parking spaces for such individuals and to locate these parking spaces on the shortest access route to the buildings. The College's handicapped parking spaces were always located in these areas adjacent to Buildings A, B and D. According to the College's Disabilities Program Coordinator, additional handicapped parking spaces, beyond the 15 required by law, were also needed. Handicapped parking passes are distributed monthly, based on a showing of medical necessity. When demand is high, 45 spaces are required.

On February 18, 1999, the Federation filed a grievance objecting to the exclusion of faculty from these parking areas. It cited the ongoing parking and infrastructure improvement program which had been in progress for several years and asserted:

> This planning should have included ways for the College to meet all of its legally defined obligations to various constituencies, including faculty, as it created new parking arrangements. The current arrangements, even on an interim basis, have placed faculty in direct competition with students for parking spaces, creating a potentially hostile workplace environment for SCFF members. Finally, the College had an obligation to notify the Federation of any planned changes in working conditions covered by the Contract.
>
> The College's failure to (1) plan for means to meet its obligations under Art. VII.C of the C.B.A. and (2) the President's failure to notify the Federation of a change in working conditions has caused all members grievous harm.
>
> The Federation requests that the College meet at once with the Federation to show how it plans to meet the specific language of Article VIII.C., to provide exclusive parking areas for employees.

On May 3, 1999, the Federation demanded arbitration. This petition ensued.[1/]

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 provided 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.

1/ Processing of this scope petition was held in abeyance while the parties attempted to resolve the grievance.

Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the parties may have. We determine only whether the subject matter in dispute is mandatorily negotiable and therefore legally arbitrable.

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]

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 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

The College asserts that the ADA preempts negotiations over these parking areas and its requirement that a certain percentage of parking spaces be provided close to the building for persons with handicaps.

The Federation disagrees that adherence to the contract clause on faculty parking is preempted. It also asserts that an arbitrator can decide factual disputes such as whether these parking spots are the only areas providing the shortest route to the buildings. It maintains that there are other parking areas which could be used for handicapped parking without violating the laws.

Parking for employees is a mandatorily negotiable term and condition of employment. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 28-29 (App. Div. 1977). Disputes over changes in the availability of parking facilities are legally arbitrable. See Jersey City Med. Center, P.E.R.C. No. 89-24, 14 NJPER 577 (¶19244 1988).

The statutes and regulations cited by the employer require that 15 parking spaces be set aside for handicapped parking in the areas closest to the facilities to be used. We also find that, although not legally mandated, the employer's decision to designate up to 30 additional spaces per month as handicapped parking, is a non-negotiable governmental policy decision. Thus, the employer's decision to reserve up to 45 of the 750 available parking spaces for handicapped parking is not mandatorily negotiable.

However, under the facts presented, the issue of whether the College could comply with its contractual obligations concerning faculty parking is not preempted by the federal and

state mandates, or necessitated by the policy decision to provide additional handicapped parking.

It is undisputed that the handicapped parking regulations and the contract clause guaranteeing faculty parking in the designated lots both existed before the commencement of the capital improvement program doubling total parking space. The employer has not shown that its obligations to the faculty under the contract and to comply with the laws regarding handicapped parking were mutually exclusive. And the employer has not challenged the Federation's assertion that there are other available locations for handicapped parking.

Arbitrators have the jurisdiction to apply pertinent statutes to decide grievances. See West Windsor Tp. and PERC, 78 N.J. 98, 107 (1978). Thus, a factual determination can be made as to whether handicapped parking, which still complies with the state and federal mandates, could have been placed, in whole or in part, in areas other than the spaces previously reserved for faculty. And the College has not established that the only possible remedy to the grievance would be to relocate handicapped parking spaces in a manner that would put the College in violation of the federal and state mandates. In advance of arbitration, we decline to speculate about the possible range of remedies an arbitrator may order. If an arbitrator's decision misinterprets or misapplies federal and state handicapped parking mandates, the College can seek to vacate or modify any such award. See Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208 (1979).

ORDER

The request of Sussex County Community College for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Madonna, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: March 30, 2000
Trenton, New Jersey
ISSUED: March 31, 2000