

P.E.R.C. NO. 86-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SPOTSWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-29

SPOTSWOOD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding Arbitration of a grievance the Spotswood Education Association filed against the Spotswood Board of Education. The grievance alleged the Board violated its collective negotiations agreement with the Association when it abolished a secretary's 12 month position and reassigned her to a different 10 month position, previously occupied by another secretary who had been laid off. The Commission finds the grievance to be not arbitrable because the Board has the non-negotiable managerial prerogative to reduce its staff for organizational and budgetary reasons.

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Appearances:

For the Petitioner, Golden, Shore, Zahn & Richmond
(Philip H. Shore, Esq., Of Counsel)

For the Respondent, Katzenbach, Gildea & Rudner
(Arnold M. Mellk. Esq., Of Counsel)

DECISION AND ORDER

On November 19, 1985, the Spotswood Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Spotswood Education Association ("Association") has filed. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it reduced the work year of Geraldine Cia, a tenured school secretary, from 12 months to 10 months and reduced her salary by abolishing Cia's position and giving her a position previously occupied by a laid-off non-tenured secretary.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's teachers, secretaries and certain other employees. The Board and the Association have entered a collective negotiations agreement effective from July 1, 1983 through June 30, 1985. Its grievance procedure ends in binding arbitration.

During the 1984-1985 school year the Board operated three schools and employed six secretaries. Four secretaries held 12 month positions and two held 10 month positions. The salary guide reflects both positions. One 12 month position was allocated to an elementary school which also had a summer program. One 10 month secretary was assigned to an elementary school (K-3) which was not open in the summer. The remaining positions were assigned to the district's secondary school covering grades 7-12.

The Board decided to open a fourth school to house grades 7 and 8 for the 1985-1986 school year. On May 29, 1985 the Board made several personnel moves to staff the fourth school which would be open only during the 10 month school year. Because of the added costs in operating a fourth school, the Board, to reduce expenses, abolished a 12 month secretarial position assigned to the high school. Cia, the tenured holder of the position, was given a 10 month position and assigned to the new school. A non-tenured secretary, who held the 10 month job during 1984-1985, was laid off.^{1/}

^{1/} The superintendent's affidavit asserts that Cia's 1984-1985 performance was not totally satisfactory.

On June 20, 1985 the Association filed a grievance alleging that the reduction of Cia's work year and salary was a reduction in rank and compensation without just cause in violation of Articles 5.B.1 and 7.D of the contract. The grievance sought Cia's reinstatement to a 12 month position and/or maintenance of her salary at a 12 month rate. The Board denied the grievance and the Association demanded binding arbitration. This petition ensued.

The Board asserts that it had a managerial prerogative to abolish Cia's position because of organizational and budgetary considerations, and to transfer her based upon its organizational needs and evaluations of employee performance. The Association contends that the Board unilaterally reduced Cia's work year in violation of Piscataway Tp. Bd. of Ed. v. Piscataway Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978).

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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.
Id. at 154.

In Local 195, IFPTE v. State, 88 N.J. 393 (1982) ("Local 195"), the Supreme Court articulated 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.


It is undisputed that in 1984-1985 the Board employed six school secretaries, while it now employs only five. The Board thus exercised a non-negotiable managerial prerogative to reduce its staff for organizational and budgetary reasons. Tp. of Old Bridge Bd. of Ed. and Old Bridge Ed. Ass'n, 98 N.J. 523 (1985) Maywood Ed Assn v. Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). The Board also needed to staff its new school, open only ten months each year. Because the grievant had tenure she was able to "bump" a non-tenured secretary and receive the assignment to the new school rather than lose her job. Thus, the reduction in Cia's work year was the direct consequence of the Board's staff reduction, rather than a reduction of the work

year of a job which remained on the employer's organizational table, as in Piscataway. See also State of New Jersey (Ramapo State College), P.E.R.C. NO. 86-28, 11 NJPER ____ (¶____ 1985). Even though the grievant's terms and conditions of employment were changed from one year to the next, she moved between two positions whose terms and conditions of employment were fully negotiated. Cf. Plainfield Ass'n of School Administrators v. Plainfield Bd. of Ed., 187 N.J. Super. 11 (App. Div. 1982). Since the contract's salary guide contains negotiated salaries for both 12 and 10 month secretarial positions, and the grievance contains no allegation that Cia is being paid a salary which is not in accord with the guide, the entire grievance is predominantly related to the determination of significant educational policy. Arbitration is restrained.

ORDER

The request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted for this decision. Commissioner Reid abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986