

P.E.R.C. NO. 2003-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROSELLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-51

ROSELLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Roselle Board of Education for a restraint of binding arbitration of a grievance filed by the Roselle Education Association. The grievance seeks holiday compensation for certain employees who worked on the Monday after Veterans Day. The Commission concludes that an agreement providing for the payment of additional compensation to employees who work overtime, on holidays, or at times when other workers do not ordinarily work is mandatorily negotiable.

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, Ruderman & Glickman, P.C., attorneys
(Joel G. Scharff, on the brief)

For the Respondent, New Jersey Education Association
(Ronald Harvey, NJEA-NEA UniServ Field Representative, on
the brief)

DECISION

On April 25, 2002, the Roselle Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Roselle Education Association. The grievance seeks holiday compensation for certain employees who worked on Veterans Day.

The parties have filed briefs and exhibits. The Board has filed the certification of its superintendent. These facts appear.

The Association represents certificated personnel and support staff. The parties' collective negotiations agreement was effective from July 1, 1999 through June 30, 2002. The grievance procedure provides for binding arbitration.

Article VII is entitled Employee Hours and Working Load. It contains this language, applicable to educational secretaries, custodians and security guards:

All hours worked on Sundays and/or National Holidays shall be authorized by the Board and/or the Superintendent or Assistant Superintendent and shall be paid at the rate of double time.

On November 26, 2001, the Association's president submitted a grievance to the superintendent seeking compensation for support staff for Veterans Day. She stated that pursuant to Article VII, secretaries, custodians and security guards were entitled to be paid at double time since Monday, November 12 was a national holiday.

On December 17, 2001, the superintendent denied the grievance. She stated that Sunday, November 11 was the legal public holiday for Veterans Day and that no security guard, secretary or custodian worked on that day. According to the Board, it closes school for Veterans Day when November 11 falls on a weekday, but does not observe Veterans Day at all when November 11 falls on a weekend, as in 2000 and 2001.

On February 22, 2002, the Association demanded 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 contractual arbitrability or merits of the grievance.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

[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 argues that it has a managerial prerogative to set the school calendar and that 5 U.S.C. §6103 sets the national holiday of Veterans Day as November 11. The Association argues that the issue raised by the grievance may be arbitrated because it involves compensation, a mandatorily negotiable subject.

Arbitration is not preempted because Congress has decreed that the national observance of Veterans Day shall be held on November 11, irrespective of the day of the week on which that date falls.^{1/} No statute would bar the Board and the Association from agreeing that on the work day which immediately precedes or follows that holiday, employees shall receive premium compensation or additional time off.

An agreement providing for the payment of additional compensation to employees who work overtime, on holidays, or at times when other workers do not ordinarily work has been held to be mandatorily negotiable. See State of New Jersey v. Local 195, IFPTE, 169 N.J. 505 (2001); State of New Jersey (Dept. of Corrections), P.E.R.C. No. 89-111, 15 NJPER 275 (¶20120 1989), aff'd 240 N.J. Super. 26 (App. Div. 1990); State of New Jersey, P.E.R.C. No. 84-77, 10 NJPER 42 (¶15024 1983), aff'd 11 NJPER 333 (¶16119 App. Div. 1985); State of New Jersey (Office of Employee Relations), P.E.R.C. No. 98-66, 24 NJPER 7 (¶29005 1997); Woodbridge Tp., P.E.R.C. No. 88-88, 14 NJPER 250 ¶19093 1988).

Such compensation claims are severable from the adoption of academic calendars calling for schools to be open on a holiday

^{1/} The Board argues that Congress alone may decide when Veterans Day is to be observed. We note that Monday, November 12, 2001 was designated as a legal holiday by the New Jersey Supreme Court. See 162 NJLJ 99. It was also a legal holiday for the other branches of state government.

or an employer's decision to provide services to the public on holidays. Cf. State of New Jersey (Rowan Univ.), P.E.R.C. No. 99-26, 24 NJPER 483, 485 n. 4 (¶29224 1998), aff'd 26 NJPER 30 (¶31009 App. Div. 1999) (employer acknowledged that its managerial prerogative did not extend to determining whether employees required to work on a holiday would do so at straight time rates).

In Rockaway Tp. Bd. of Ed., P.E.R.C. No. 2001-6, 26 NJPER 362 (¶31145 2000), the Association asserted that the Board violated N.J.S.A. 18A:25-3, a statute allowing teachers not be report for work, without reduction of pay, on certain enumerated holidays. The Fourth of July fell on a Sunday one year. Summer school teachers worked the next day, but asserted that being required to work that day violated the contract and the statute and sought additional pay or time off as holiday compensation. Commenting on the requested relief, we observed:


[T]he amount of compensation for working on a holiday is a mandatorily negotiable subject and that the Association's grievance is effectively seeking premium pay for such work.
[Id. at 364]

This grievance does not assert that the employees had a statutory or contractual right not to work on November 12. As in Rockaway, the Association seeks only compensation. Given our limited jurisdiction, we do not comment on the Board's assertion that November 12, 2001 was not a holiday within the meaning of the negotiated agreement. Ridgefield Park.

ORDER

The request of the Roselle Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

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

DATED: September 26, 2002
Trenton, New Jersey
ISSUED: September 27, 2002