

P.E.R.C. NO. 2003-43

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-8

BOUND BROOK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a provision in an expired collective negotiations agreement between the Bound Brook Board of Education and the Bound Brook Education Association. The Commission finds that a provision concerning guaranteed overtime for custodians is not mandatorily negotiable to the extent it would require the employer the schedule services when it has determination that service are not needed. The provision is otherwise 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.

P.E.R.C. NO. 2003-43

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-8

BOUND BROOK EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Parker, McCay & Criscuolo, P.A.,  
attorneys (James F. Schwerin, on the brief)

For the Respondent, Klausner & Hunter, attorneys  
(Stephen E. Klausner, on the brief)

DECISION

On August 9, 2002, the Bound Brook Board of Education petitioned for a scope of negotiations determination. The collective negotiations agreement between the Board and the Bound Brook Education Association expired on June 30, 2002. The Board and the Association reached agreement for a successor contract with the understanding that the Board would file a scope petition on the negotiability of one provision in the expired agreement.

The parties have filed briefs and exhibits. These facts appears.

The Association represents a unit of teachers and support staff. Article 23 of the expired 1999-2002 agreement pertains to custodial personnel. Section D provides:

Work Week

- (1) Each work week will commence on Saturday and end on the following Friday and shall consist of the following hours.
- (2) All custodial personnel will work a forty-hour (40) work week with a guarantee of 1200 overtime hours during the work years as follows:
  - (a) Each elementary custodian will be guaranteed a minimum of 280 overtime hours per year
  - (b) Each high school custodian will be guaranteed a minimum of 80 overtime hours per year.
- (3) Custodians shall not be limited to the number of overtime hours as specified in D-2 above.
- (4) Custodians shall be advised of overtime hours at least one week in advance and have the opportunity to pass over the time unless an emergency arises. However, all custodians must eventually work the required minimum number of overtime hours as outlined in D-2 above, unless they notify the Board of Education and the Association in writing that they wish to give up their claim to any overtime hours which would be needed to qualify for the minimum number.
- (5) At the end of September, December and March, the Supervisor of Buildings and Grounds shall inform the custodians of the number of overtime hours remaining and inquire as to their intent to continue working overtime.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v.

Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

We consider only the abstract negotiability of the disputed clauses. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

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]

The Board seeks to delete Article 23, Section D, from the successor agreement. It argues that the need for overtime is a managerial prerogative not subject to negotiations.

The Association argues that contractual provisions relating to the allocation of overtime are mandatorily

negotiable. It asserts that custodians work more hours than the agreement provides and that the provision simply ensures equitable distribution of overtime hours.

The Board does not dispute that custodians, in fact, work more hours than the agreement provides, but responds that the duty to negotiate over the allocation of overtime opportunities is not the same as guaranteeing that employees will be guaranteed a minimum number of hours of overtime. It asserts that if the provision were limited to establishing a priority list among employees for overtime work it would be negotiable, but only if it did not infringe on management's right to meet emergencies and use employees with particular skills.

Rates of pay and work hours are among the most fundamental terms and conditions of employment. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 8-9 (1973); Burlington Cty. Coll. Faculty Ass'n v. Bd. of Trustees, 64 N.J. 9 (1973); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589 (1980); Local 195; New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988). Against that backdrop, a public employer has a managerial prerogative to determine when governmental services will be delivered and the staffing levels associated with the delivery of those services. City of Long Branch, P.E.R.C. No.

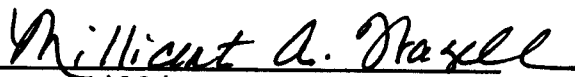
83-15, 8 NJPER 448 (¶13211 1982). An overtime guarantee cannot be used to require an employer to deliver services when it chooses not to do so.

To the extent the provision requires the employer to schedule work hours when it has determined that services are not needed, the provision is not mandatorily negotiable. To the extent the provision requires that needed work hours should be distributed pursuant to a negotiated overtime allocation system, the provision is mandatorily negotiable. Such an allocation system is subject to an employer's prerogative to deviate from that system in an emergency or should an employee with special qualifications be needed.

ORDER

Article 23, Section D is not mandatorily negotiable to the extent it requires the employer to schedule work hours when it has determined that services are not needed. The provision is mandatorily negotiable to the extent it requires that needed work hours should be distributed pursuant to a negotiated overtime allocation system.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Katz was not present.

DATED: December 19, 2002  
Trenton, New Jersey  
ISSUED: December 20, 2002