

P.E.R.C. NO. 98-155

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-54

CHERRY HILL ASSOCIATED
SUPERVISORY PERSONNEL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Cherry Hill Board of Education for a restraint of binding arbitration of a grievance filed by the Cherry Hill Associated Supervisory Personnel. The grievance asserts that the Board terminated a dispatcher without just cause and filled a new position with a new employee doing the same duties as the dispatcher. The Commission finds that the Board has a right to privatize its bus transportation services and has a managerial prerogative to create a position that includes some of the former dispatcher's duties. The Board also has a right to fill the new position from among qualified candidates. The Commission grants the restraint to the extent the grievance challenges the Board's right to create and fill the position.

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, Schwartz, Simon, Edelstein, Celso &
Kessler, P.C., attorneys (Marc H. Zitomer, on the brief)

For the Respondent, Selikoff & Cohen, attorneys
(Steven R. Cohen, on the brief)

DECISION

On December 24, 1997, the Cherry Hill Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Cherry Hill Associated Supervisory Personnel. The grievance asserts that the Board terminated a dispatcher without just cause and filled a new position with a new employee doing the same duties as the dispatcher.

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

The Association represents the Head Groundsperson, Transportation Supervisor/Dispatcher, Transportation Supervising

Mechanic, Warehouse Manager, High School Head Custodian, Junior High School Head Custodian and Office Supervisors employed by the Board. The Association and the Board are parties to a collective negotiations agreement effective from July 1, 1995 through June 30, 1999. The parties' grievance procedure ends in binding arbitration.

The Board employed Alfred Martinez as a dispatcher with responsibility for dispatching and supervising bus drivers. He was non-tenured. In late Spring of 1997, the Board decided to privatize its transportation services. As part of the reorganization, the Board eliminated a number of positions in the transportation department, including Martinez's dispatcher position. The Board laid off all employees and privatized their work.

As part of the reorganization, the Board created a position called "administrative assistant of transportation." The employee in this position would help oversee the privatized transportation services. A salary was established lower than that paid Martinez, but higher than that paid head drivers. The Board posted the new position and all former transportation employees were encouraged to apply for the job. Martinez did not apply. After screening applicants, the Board offered the job to a person whom it had employed as a driver.

Martinez's main responsibility as the transportation supervisor/dispatcher had been supervising and dispatching bus

drivers. By contrast, the primary duties of the administrative assistant for transportation are computerized bus routing and scheduling and "daily handling of parental concerns." In addition, the administrative assistant for transportation is responsible for distributing route information to contractors, parents and staff and maintaining and updating district transportation maps. Those duties, along with the computerized routing and scheduling, were not part of the transportation supervisor's responsibilities.

The Association filed a grievance objecting to the elimination of the dispatcher position and the failure to appoint Martinez to the new position. The grievance was denied at levels one and two and proceeded to level three. The Superintendent denied the grievance at level three, stating:

Please accept this letter as a response to the grievance you filed on behalf of Mr. Alfred Martinez on or about August 15, 1997. Therein, you claim that Mr. Martinez was improperly terminated because the new position of administrative assistant for transportation is merely a change in title from the abolished position of dispatcher. You seek to have Mr. Martinez reinstated with back pay.

Please be advised that the matter was the subject of an extensive meeting between Mr. Martinez, his representative, Jack McGee and myself. The parties examined the new job description and compared it to the duties Mr. Martinez performed as a dispatcher. At that time, Mr. Martinez provided a 33-item list of responsibilities he performed as dispatcher. Mr. Martinez admitted to not performing certain tasks assigned to the new position, as well as admitting that he performed only limited aspects of other tasks. Furthermore, our

analysis of the relevant job descriptions shows them to be sufficiently different so as to defeat Mr. Martinez's claim in this matter. Finally, Mr. Martinez was afforded the opportunity to apply for the new position when it was posted, he failed to do so.

On September 26, 1997, the Association demanded arbitration. This petition ensued.

The Board asserts that it has a managerial prerogative to privatize operations. It relies on IFPTE Local 195 v. State, 88 N.J. 393 (1982). The Board further asserts that it has no obligation to negotiate over positions created after it subcontracted the transportation services. The Board asserts that the Association did not demand negotiations over the new position and therefore it did not violate the law by not negotiating with the Association over its salary. Finally, the Board asserts that it has a managerial prerogative to select the applicant it deems most qualified for a position and that arbitration should be restrained, especially since Martinez did not apply for the position.

The Association asserts that the Board has unilaterally shifted unit work performed by Martinez to a non-unit employee under "the guise of a RIF." It argues that an arbitrator should determine whether the new position belongs in the Association's negotiations unit. It further argues that if the answer is yes, the arbitrator should be able to direct that Martinez be placed in the new position.

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 the grievance or any contractual defenses the Board may have.

The Association does not contest the Board's right to subcontract bus services. See Local 195. The Association instead asserts that this dispute primarily involves preservation of unit work since the Board allegedly created a position which was essentially the same as the dispatcher position it eliminated when it privatized transportation services. The Board counters that the creation of the new title is incidental to the subcontracting of transportation services and not mandatorily negotiable.

An employer is generally obligated to negotiate with the majority representative before shifting work historically performed by one group of employees within a negotiations unit to other employees outside the unit. See, e.g., North Arlington Bd. of Ed., P.E.R.C. No. 98-10, 23 NJPER 469 (128210 1997). But where an employer has exercised its managerial right to reorganize the way it

delivers government services, it may, by necessity, be able to transfer job duties to non-unit employees without incurring a negotiations obligation. See, e.g., Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985) (employer consolidating police and fire dispatching functions had managerial prerogative to employ civilian dispatchers); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) (board had prerogative to reorganize supervisory structure for custodial employees with consequence that some unit work was shifted outside negotiations unit).

The Board reorganized the way it delivered transportation services by deciding to privatize bus transportation instead of employing its own bus drivers. A necessary consequence of that decision was the elimination of transportation supervisor duties. Moreover, in connection with its decision to privatize, the Board had a managerial prerogative to create a position that includes some of the former transportation supervisor's duties, but has an overall different mix of duties reflecting the Board's new requirements. See Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997) (employer had unilateral right to establish new job title with expanded duties); Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986) (employer has managerial prerogative to create positions, hire employees, and determine their duties).

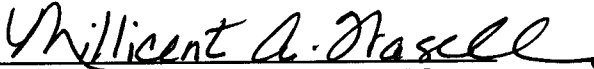
Finally, having created the position, the Board had a right to fill that position from among qualified candidates. State v.

State Supervisory Employees Ass'n, 78 N.J. 54, 90 (1978); Sayreville Bd. of Ed., P.E.R.C. No. 87-106, 13 NJPER 264 (18108 1987). That Martinez performed some of the functions of the new position does not automatically entitle him to the job. For these reasons, we restrain arbitration over the decisions to create and fill the administrative assistant position.

ORDER

The request of the Cherry Hill Board of Education for a restraint of binding arbitration is granted to the extent the grievance challenges the Board's right to create and fill the position called administrative assistant of transportation.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Klagholz and Ricci voted in favor of this decision. Commissioners Buchanan and Finn voted against this decision. Commissioners Boose and Wenzler were not present.

DATED: June 25, 1998
Trenton, New Jersey
ISSUED: June 26, 1998