P.E.R.C. NO. 99-104

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-99-61

PASCACK VALLEY REGIONAL SUPPORT
STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Pascack Valley Regional High School Board of Education for a restraint of binding arbitration of a grievance filed by the Pascack Valley Regional Support Staff Association. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it replaced full-time secretarial positions with part-time secretarial positions. The Commission finds that the employees' interests in seeking to enforce an alleged agreement to maintain their work hours, salaries, and health benefits outweighs the employer's interests in seeking to change those employment conditions unilaterally.

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, Fogarty & Hara, attorneys
(Rodney T. Hara, on the brief)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, on the brief)

DECISION

On March 1, 1999, the Pascack Valley Regional High School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Pascack Valley Regional Support Staff Association. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it replaced full-time secretarial positions with part-time secretarial positions.

The parties have filed briefs, their collective negotiations agreement, and their grievance documents and responses. No certifications or affidavits were submitted. These facts appear.

The Association represents the Board's secretaries. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1994 through June 30, 1997. The grievance procedure ends in binding arbitration.

On April 6, 1998, the Board adopted a resolution to offer part-time contracts for the 1998-99 school year to three full-time secretaries employed by the Board. The contracts were issued to the general secretary in the superintendent's office, the general secretary in the principal's office at Pascack Hills High School, and the general secretary in the principal's office at Pascack Valley High School. In addition, the Board created one other part-time secretarial position in each of these offices.

On June 1, 1998, the Association filed a grievance. The grievance states:

> The Association is grieving the Board of Education action replacing full-time secretaries with part-time secretaries based on the fact that the Board of Education has taken unit positions and broken each of them into two part-time positions to avoid their contractual responsibilities and obligation to provide salary and benefits in accordance with the negotiated Agreement between the Board of Education and the Association.

On August 31, 1998, the Board denied the grievance. It stated, in part:

> Procedurally, the grievance has not been timely filed in accordance with the provisions of Article III, paragraph D, section 2 of the parties' collective negotiations agreement. All grievances have to be initiated "within thirty (30) calendar days of an event which gives rise to a grievance." Failure to act

> within the thirty day time period constitutes "an abandonment of the grievance." The PVRSSA and the affected employees knew that they were not going to be offered full time employment more than thirty days before the grievance was filed.
>
> Even if the grievance was not deemed abandoned, there is not a prohibition in the parties' collective negotiations agreement from employing part time secretaries instead of full time secretaries. To the contrary, it is a non-negotiable prerogative of management to determine how secretarial services should be provided. Similar actions have been taken by the Board throughout the year.

On November 4, 1998, 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 merits of the Association's grievance or the Board's defenses.

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 employer 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 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]

There is no preemption issue in this case.

While the Board recognizes that work schedules and compensation are ordinarily mandatorily negotiable, it argues that it had a managerial prerogative to abolish the three full-time secretarial positions and create six part-time positions to increase flexibility in secretarial services. It argues that its "restructuring" of secretarial positions will allow it to assign different functions to secretaries who demonstrate proficiencies for those tasks. It also states that there is less down time when a secretary is absent because each secretary has a morning and afternoon replacement who knows the functions of the position. While it acknowledges that the creation of part-time positions resulted in cost savings because it does not pay for medical insurance for part-time secretaries, it argues that an employer has a managerial prerogative to restructure its work force where

there are economic as well as policy reasons for its decision.1/

The Association counters that the Board created the six part-time positions to avoid its salary and benefit obligations under the negotiated agreement. But it also argues that an arbitrator should determine whether the Board had a managerial prerogative to abolish full-time positions and create part-time positions as part of a reorganization. In the alternative, it asks us to order a hearing under N.J.A.C. 19:13-3.6.

The Board responds that we must decide whether or not it had a managerial prerogative to take the actions it did and that the Association's request for a hearing under N.J.A.C. 19:13-3.6 is untimely and does not meet the specificity requirements of N.J.A.C. 19:13-3.6(a).

We agree with the Board concerning these threshold procedural and jurisdictional issues. We have primary jurisdiction to determine the legal arbitrability of a grievance asserting that the Board violated the parties' agreement when it reduced secretarial work schedules from full-time to part-time. Ridgefield Park. Further, the Association's request for a hearing does not comply with our rules. See N.J.A.C. 19:13-3.6(a) (request for hearing must set forth the specific factual issues which are

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1/ The Board states that a grievance "on the medical insurance issue" has been submitted to arbitration.

contended to be in substantial and material dispute). We are also satisfied that the record enables us to assess whether the Board had a managerial prerogative to abolish the three full-time positions and create six part-time positions.

We turn now to that question. It is well-established that a public employer has a non-negotiable prerogative to reduce the overall number of employees through layoffs. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 74 N.J. 248 (1977). However, short of abolishing a position, an employer ordinarily has a duty to negotiate before reducing its employees' workday, workweek or work year for other than governmental or educational policy reasons. See, e.g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 8 (1978); In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978); Lenape Valley Reg. Bd. of Ed., P.E.R.C. No. 97-25, 22 NJPER 360 (¶27189 1996); City of Newark, P.E.R.C. No. 94-118, 20 NJPER 276 (¶25140 1994); Gloucester Cty., P.E.R.C. No. 93-96, 19 NJPER 244 (¶24120 1993); Stratford Bd. of Ed., P.E.R.C. No. 90-120, 16 NJPER 429 (¶21182 1990); Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988); Willingboro Bd. of Ed., P.E.R.C. No. 86-76, 12 NJPER 32 (¶17012 1985); State of New Jersey (Ramapo State College),

P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985); Cherry Hill Bd. of Ed., P.E.R.C. No. 85-68, 11 NJPER 44 (¶16024 1984); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982); Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), aff'd NJPER Supp.2d 108 (¶89 App. Div. 1982), certif. den. 89 N.J. 429 (1982). Compare and contrast State of New Jersey (DEP), P.E.R.C. No. 95-115, 21 NJPER 267 (¶26172 1995), aff'd 285 N.J. Super. 541 (App. Div. 1995), certif. denied, 143 N.J. 519 (1996)(reduction of State employees' workweek would ordinarily be negotiable, but reduction in that case was a layoff action under Merit System Board regulations and was preempted by those regulations).

The rationale underlying these cases is that work hours and compensation were the subjects most in the Legislature's mind when it adopted the Act and that, absent a significant interference with a governmental policy reason, a unilateral reduction in work hours, and a concomitant reduction in salary, violates the spirit and letter of the Act. Piscataway; Ramapo (no managerial prerogative to reduce 12 month to 10 month position when college acted in part for fiscal reasons, did not change the way counseling services were delivered, and did not identify any educational policy reason for work year change); Newark (City did not show how abiding by alleged agreement to preserve work hours would significantly interfere with governmental policy); see also

Sayreville, 9 NJPER at 141 (to the extent employer is trying to save money expended on employee compensation it must, short of the abolition of a position, negotiate reductions in compensation and work year).

Analyzing the parties' interests within this framework, we find that the balance weighs in the employees' favor. As a result of the Board's action, three full-time secretaries had their hours and salaries reduced (presumably by half) and their health benefits eliminated. The Association and the employees it represents have a strong interest in preserving an alleged agreement to maintain its members' work hours, salary and benefits - items that intimately affect the employees' working conditions and that go to the heart of the negotiations process. While we agree with the Board that an employer ordinarily has a prerogative to abolish or create positions, the fact that it took such actions in the course of reducing employees' work hours does not eliminate its obligation to negotiate over those reductions. Hackettstown; accord Lenape; Bayshore; East Brunswick.

With respect to the Board's interests, it appears that it is providing the same type and quantity of secretarial services as before, and within the same time frame, albeit with six part-time instead of three full-time secretaries. It acknowledges that it saved money because it does not provide health benefits for part-time secretaries, but also asserts that it made a policy decision to change the way it delivers secretarial services and

cites Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992); Fairview Bd. of Ed., P.E.R.C. No. 84-43, 9 NJPER 659 (¶14285 1983); Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985); and Tenafly Bd. of Ed., P.E.R.C. No. 83-123, 9 NJPER 211 (¶14099 1983). Reliance on these cases is misplaced.

In Hoboken and Tenafly, we found a prerogative to modify individual work hours to the extent necessary to accommodate a change in the employer's overall hours of operation (Hoboken) or to provide supervision as a result of the elimination of a position (Tenafly). In Maplewood and Fairview, we restrained arbitration over changes in compensation, where those changes flowed inevitably from the decision to abolish or consolidate a position. Here, the Board does not identify any independent educational or governmental policy decision that could be implemented only by employing part-time instead of full-time secretaries and reducing the hours and compensation of existing employees.2/ While the Board alleges that efficiency will be increased by hiring part-time secretaries, the relevant inquiry is not whether the employer might be able to identify some benefit

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2/ The Board suggests that the decision to hire part-time instead of full-time secretaries is itself such an organizational or policy decision. Given that the Board reduced existing unit positions from full-time work hours to part-time work hours, that reasoning is inconsistent with the Appellate Division's decision in Piscataway and the substantial body of case law noted earlier.

from not adhering to the agreement, but whether preservation of a negotiated agreement concerning work hours and benefits would significantly interfere with a governmental or educational policy decision. See Newark.

For example, the Board argues that, with six-part time employees, the effect of secretarial absences is mitigated because each secretary has a morning or afternoon counterpart who could perform the absent secretary's duties (presumably for one-half the day). But the Board does not suggest that the creation of the six part-time positions is the only way to address coverage problems resulting from secretarial absences. Compare Morris Cty. College, P.E.R.C. No. 92-24, 17 NJPER 424 (¶22204 1991)(college could extend hours of print shop but could not unilaterally require each employee to work a new shift once a week; record did not establish that employer's method was the only way to provide coverage); see also Sayreville (operational problems caused by 12-month secretary's vacation scheduling did not justify reducing position to a 10-month position).

Similarly, the Board states that creating the part-time positions will allow it to have morning and afternoon secretaries work together, if needed, during either the morning or the afternoon, in order to provide increased secretarial services during peak periods. But the Board does not state that increased services have ever been provided and it has not shown that the replacement of three full-time with six part-time positions is the

only way to address any need for increased services during peak periods.

Finally, while the Board maintains that it is "now able to assign various secretarial duties to specific secretaries who demonstrate a particular skill or acumen for them," it does not state how secretarial work is performed differently from before and does not suggest that the newly-hired secretaries were required to have different skills than the former full-time secretaries.

Applying Local 195's balancing test, we hold that the employees' interests in seeking to enforce the alleged agreement to maintain their work hours, salaries, and health benefits outweighs the employer's interests in seeking to change those employment conditions unilaterally. We therefore decline to restrain binding arbitration.

ORDER

The request of the Pascack Valley Regional High School Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. Commissioner Boose abstained from consideration.

DATED: May 27, 1999
Trenton, New Jersey
ISSUED: May 28, 1999