P.E.R.C. NO. 98-112

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBURY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-16

WOODBURY SCHOOL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Woodbury Board of Education for a restraint of binding arbitration of a grievance filed by the Woodbury School Employees Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it reduced the salaries of nighttime, part-time custodians by laying them off for five work days in March 1997. The Commission finds that in this case no positions were abolished and the work force was not reduced and instead the employer effectively reduced the workyear and salaries of nighttime custodians. A grievance contesting such reductions 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, Cassetta, Taylor, Whalen & Hybbeneth, consultants (Raymond A. Cassetta, on the brief)

For the Respondent, Eugene J. Sharp, NJEA Representative

DECISION

On August 12, 1997, the Woodbury Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Woodbury School Employees Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it reduced the salaries of nighttime, part-time custodians by laying them off for five work days in March 1997.

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

The Association represents "all regularly employed full-time and part-time maintenance, custodial and grounds employees" of the Board. The parties' grievance procedure ends in binding arbitration.

The Board and its part-time custodians entered into employment contracts providing that the part-time custodians would be employed from July 1, 1996 to June 30, 1997 "at the rate of $7.65 per hour, 3 1/2 hours per night, 17 1/2 hours per week based on a five (5) day week." Such contracts could be terminated by either party on 14 days' notice to the other party, but shorter notice was permitted if a discharge was for cause or the result of a reduction-in-force.

The parties' collective negotiations agreement provides that non-probationary employees will be issued annual employment contracts with a two week termination provision and will receive specified vacations and holidays. The agreement also provides that "[t]he length of the part-time work day will be determined by the administration." In addition, the agreement states that employees cannot be suspended or discharged without just cause.

On March 21, 1997, a Friday, their supervisor told the nighttime custodians that they would be laid off for the next week. The custodians did not work that week. They all returned to work on April 1, 1997.

On April 1, 1997, the Association filed a grievance. It asserted that the Board had wrongfully reduced the custodians' salaries and it sought to have the lost monies repaid. According to the Association's brief, the loss of one week's pay reduced the negotiated compensation of the nighttime custodians by 2.3%.

The grievance was denied. The superintendent asserted that the Board had exercised its contractual rights.

The Association demanded arbitration. It identified the nature of the dispute as:

> The Board of Education reduced salary of part-time custodial employees by laying them off for the period March 22 through April 1, 1997 in violation of the Agreement.

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.

We do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

A public employer has a non-negotiable prerogative to reduce the 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). Ordinarily, however, an

employer has a duty to negotiate before reducing its employees' workday, workweek or work year. See, e.g., Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 8 (1978)(reducing secretarial workday from seven hours to four hours); In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978)(reducing principals' work year from 12 months to 10 months); Lenape Valley Reg. Bd. of Ed., P.E.R.C. No. 97-25, 22 NJPER 360 (¶27189 1996)(reducing work year of subject area supervisor from 205 days to 185 days); City of Newark, P.E.R.C. No. 94-118, 20 NJPER 276 (¶25140 1994)(reducing workweek of recreation leaders from 40 hours to 20 hours); Gloucester Cty., P.E.R.C. No. 93-96, 19 NJPER 244 (¶24120 1993)(reducing nurse's workweek from 40 hours to part-time position); Stratford Bd. of Ed., P.E.R.C. No. 90-120, 16 NJPER 429 (¶21182 1990)(reducing bus driver's workweek from 36 hours to 21 hours); Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988)(reducing laboratory technician's workweek from 40 hours to 20 hours); Willingboro Bd. of Ed., P.E.R.C. No. 86-76, 12 NJPER 32 (¶17012 1985)(reducing cafeteria employees' workday from six hours to four hours); State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985)(reducing administrator's work year from 12 months to 10 months); Cherry Hill Bd. of Ed., P.E.R.C. No. 85-68, 11 NJPER 44 (¶16024 1984)(reducing cafeteria employees' workday from six hours to five and one-half hours); Sayreville Bd. of Ed., P.E.R.C. No. 83-105,

9 NJPER 138 (¶14066 1983)(creating 10 month secretarial position and hiring employee into that position instead of 12 month position); East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982)(abolishing guidance counselor's 12 month position and substituting 10 month position); 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)(abolishing 11 and 12 month teaching positions and creating 10 month positions instead). Compare Union Cty., I.R. No. 92-4, 17 NJPER 448 (¶22214 1991)(restraining employer from unilaterally implementing a five-day furlough); City of Clifton, I.R. No. 92-5, 17 NJPER 452 (¶22215 1991)(accord). Contrast State of New Jersey (DEP) v. CWA, 285 N.J. Super. 541 (App. Div. 1995), certif. den. 143 N.J. 519 (1996)(holding layoff/workweek dispute preempted by Civil Service statutes and regulations covering State employees only). In Piscataway, the Appellate Division panel stressed the distinction between the non-negotiable decision to reduce the overall number of employees and the generally negotiable decision to cut the work hours and compensation of employees continuing to work:

> The Board here argues that economy motivated the action complained of and that there is no material difference between the Board's right to cut staff and the right to cut months of service of staff personnel where the economy motive is common to both exercises. We disagree. While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without prior negotiations,

> [citations omitted] there cannot be the slightest doubt that cutting the work year, with a consequence of reducing annual compensation of retained personnel...and without prior negotiation with employees affected, is in violation of both the text and the spirit of the Employer-Employee Relations Act. [Id. at 101]

In this case, the employees were told that they would be coming back to work after one week and they did. No positions were abolished and the work force was not reduced. Instead, the employer effectively reduced the workyear and salaries of nighttime custodians. A grievance contesting such reductions is mandatorily negotiable so we decline to restrain arbitration. We repeat that we do not consider whether the Board had a contractual right to have these employees work one less week during the 1996-1997 school year than they otherwise would.

ORDER

The request of the Woodbury 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, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: February 26, 1998
Trenton, New Jersey
ISSUED: February 27, 1998