P.E.R.C. NO. 86-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VERONA BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-86-32

VERONA EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Verona Board of Education to restrain binding arbitration of a grievance that the Verona Education Association filed against the Board. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it changed the time its secretaries daily started and stopped work. The Commission finds that work hours is the dominant issue and therefore the grievance is mandatorily negotiable.

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Appearances:

For the Petitioner, Metzler Associates
(Stanley C. Gerrard, Labor Consultant)

For the Respondent, New Jersey Education Association
(Carol Rosenfeld, UniServ Field Representative)

DECISION AND ORDER

On November 27, 1985, the Verona Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Verona Education Association ("Association") has filed. The grievance alleges that the Board violated its collective negotiations agreement with the Association when, without negotiations, it changed the time its secretaries daily started and stopped work during the summer.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's teachers, secretaries and certain other employees. The

Board and the Association have entered a collective negotiations agreement effective from July 1, 1984 through June 30, 1987. The grievance procedure for secretaries ends in binding arbitration. Article 2.5 provides that "[a]ny change in terms and conditions of employment shall be first negotiated with the majority representative."

For more than nine years before the summer of 1985, secretaries who worked in the Board's schools during the months of July started work at 8:00 a.m. and stopped work at 3:00 p.m. and secretaries who worked in the Board's central and special education offices started work at 9:00 a.m. and stopped work at 4:00 p.m. All secretaries received a one hour, duty-free lunch period.

Effective July 1, 1985, the Board unilaterally changed the work hours of all summer secretaries to 8:30 a.m. to 3:30 p.m.

On July 19, 1984, the Association filed a grievance claiming that the Board had violated Article 2.5. The grievance asked that the Board restore the traditional summer working hours.

On July 31, 1985, the superintendent denied the grievance as untimely, procedurally defective and non-meritorious. The Board affirmed this ruling.

On September 9, 1985, the Association demanded binding arbitration. The demand described the "nature of the dispute" as a unilateral change in work hours and the "remedy sought" as a return to previous hours and overtime pay. This petition ensued.

The Board asserts that it desired all secretaries' arrival and departing times to be uniform and it had a managerial prerogative to make this change under Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980).

The Association argues that work hours are mandatorily negotiable. It cites the difficulties (e.g., child care and transportation) employees face when their hours are unilaterally changed and contends that the Board has adduced no specific proof that the change was so necessary to an efficient operation that it could not have negotiated over work hours beforehand.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

> 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.

Thus, we do not consider the merits of the Association's grievances or any of the Board's substantive or procedural defenses. Nor do we consider the change's wisdom. Instead we consider only the abstract

issue of whether the Board could legally agree to negotiate before changing summer work hours for secretaries.[1/]

In Local 195, IFPTE v. State, 88 N.J. 393 (1982) ("Local 195"), the Supreme Court articulated 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.

In Wright v. City of E. Orange Bd. of Ed., 99 N.J. 112 (1985), the Court added that in determining what is significant interference in school board cases, its focus has been primarily upon the extent to which students and teachers are congruently involved. See also Woodstown-Pilesgrove.

Applying the first test under Local 195, we find that the change in working hours intimately and directly affects the work and welfare of secretaries. In Local 195 itself, the Court recognized that the prime examples of subjects falling within this category are

1/ We are also not considering, since this is not an unfair practice case, whether the Board was statutorily required to negotiate.

rates of pay and working hours. Supra at 403. See also Woodstown-Pilesgrove at 509; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973) ("Englewood"); Burlington County College Faculty Ass'n v. Bd. of Trustees, Burlington County College, 64 N.J. 10,12,14 (1973). Accordingly, Local 195's first test has been satisfied.

Under Local 195's second test, a subject is not negotiable if it has been fully or partially preempted by statute or administrative regulation. Neither party has identified such a statute or regulation and we have found none.

Under Local 195's third test, a subject will be non-negotiable if a negotiated agreement would significantly interfere with the determination of governmental policy. This test assumes that negotiation on matters affecting the work and welfare of public employees will always impinge to some extent on the determination of governmental policy. Thus, the requirement that the interference be "significant" balances the interests of public employees against the interests of public employers. When the dominant issue involves a significant interference with the determination of governmental policy, there is no obligation to negotiate or submit a matter to binding arbitration. When, however, the dominant issue involves the employees' interest in their terms and conditions of employment, the legislative policy favoring negotiation and arbitration prevails.

In this case, we believe that the employees' interest in having a say concerning their working hours is the dominant issue. As the Supreme Court said in Englewood, working hours was surely one of the items most evidently in the legislature's mind when it extended the New Jersey Employer-Employee Relations Act to public employees. As the Supreme Court held in Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n of Ed. Sec's, 78 N.J. 1 (1978), the unilateral alteration of secretaries' reporting and departing times violates the Act. The instant change does not involve students, teachers or even days when schools are in session. Wright v. City of East Orange Bd. of Ed., supra. Nor have any specific facts been adduced to show why it is necessary, instead of merely convenient, to change such a fundamental term and condition of employment without first negotiating with the employees' representative.[2/] On balance, then, we see no reason here to deviate from the general rule that working hours are mandatorily negotiable. See also State of New

2/ That an employer may be obligated to negotiate over a term and condition of employment such as working hours does not mean that an employer must accept the employees' proposal or that if it accepts the proposal in one contract, it is forever barred from changing that term and condition after the contract expires. In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978). See also Gorman, Basic Text on Labor Law, (1976) at 445-450.

Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985); Cape May County, P.E.R.C. No. 83-98, 9 NJPER 97 (¶14053 1983).

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. Commissioner Reid abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986