P.E.R.C. NO. 90-120

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STRATFORD BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-89-66

STRATFORD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance pressed by the Stratford Education Association against the Stratford Board of Education. The grievance contests a directive limiting a bus driver's work and compensation to transportation-related tasks only. The Commission finds that the grievance predominantly involved work hours and compensation and is therefore mandatorily negotiable and arbitrable.

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Appearances:

For the Petitioner, Capehart & Scatchard, attorneys (Robert J. Hagerty, of counsel)

For the Respondent, Selikoff & Cohen, attorneys (Steven R. Cohen, of counsel)

DECISION AND ORDER

On May 1, 1989, the Stratford Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance pressed by the Stratford Education Association. The grievance contests a directive limiting a bus driver's work and compensation to transportation-related tasks only.[1/]

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

The Association represents bus drivers and certain other employees. The parties entered into a collective negotiations

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1/ The parties agreed to stay arbitration pending this decision. This case was held for many months while the parties tried to settle it.

agreement effective from July 1, 1987 through June 30, 1990. The grievance procedure ends in binding arbitration of certain disputes.

In the early 1980's, the Board hired Cheryle DiGenova as a mini-bus driver for in-district assignments. Another driver, Novella Turner, did out-of-district assignments. Both DiGenova and Turner did office work while not driving. Turner was not reappointed after the 1986-87 school year.

At the beginning of the 1987-88 school year, John Deserable became business administrator/board secretary. He informed the Board that DiGenova was being paid for 36 hours a week for transportation work, even though she was driving only 21 hours a week. The district is reimbursed for 90% of its transportation-related costs.

On September 9, 1988, Deserable wrote DiGenova a letter advising her that she would be paid for transportation-related activities only and that the Board would try to have her work the required number of hours to maintain her benefits. He instructed her to break down her hours to show how much time she spent driving and how much she spent doing clerical work.

On September 26, 1988, the Board adopted a new job description for mini-bus driver. The old and new descriptions are the same except for one line. The old description required the mini-bus driver to do "other duties as assigned by the Superintendent's office." The new description requires the mini-bus driver do "other transportation related assignments as made by the Superintendent's office." According to Deserable, this change

clarified that DiGenova would be employed and paid for transportation-related assignments only. DiGenova's clerical duties were apparently given to a former part-time office worker who had been made full-time.

The Association filed a grievance asserting that by unilaterally changing DiGenova's terms and conditions of employment, the Board had violated contractual provisions on negotiation procedures, employee rights and past practices. The grievance asked that DiGenova be paid all compensation due her. The grievance was denied at each stage of the grievance procedure on the grounds that the Board had a contractual right and managerial prerogative to determine staffing levels and work hours. The Association demanded arbitration and this petition ensued. DiGenova has since resigned.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. 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]

Thus, we do not consider the contractual merits of the grievance or any defenses the employer may have.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a dispute involving school board personnel is mandatorily negotiable and may be submitted to binding arbitration if:

> (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. [Id. at 404-405]

Absent any preemption argument, we focus on Local 195's balancing test.

We start with the employee's interests. DiGenova worked 36 hours a week and did clerical work during her non-driving work hours. When her clerical duties were reassigned to someone else, her work hours and compensation apparently were severely reduced. Thus the grievance concerns work hours and compensation, the items most evidently in the legislative mind as required subjects for collective negotiations. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 589, 594 (1980).

We now examine the employer's interests. The motivation for its actions appears to have been that payment for a bus driver's clerical tasks is not reimbursed. No educational policy has been advanced for this apparent reduction in hours and compensation.

There is no suggestion that DiGenova had not done her clerical tasks well or that those tasks are no longer being done.

Balancing these interests, we conclude that the grievance predominantly involves DiGenova's work hours and compensation and is therefore mandatorily negotiable and arbitrable. This result is supported by Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988) and Highland Park Bor., P.E.R.C. No. 90-29, 15 NJPER 606 (¶20251 1989). In Bayshore, we permitted arbitration of a grievance contesting the taking away of a laboratory technician's non-laboratory tasks and the resultant cut in weekly work hours from 40 to 20. We held that an employer, short of abolishing a position, must negotiate over reductions in an employee's work hours and compensation. In Highland Park, we permitted arbitration of a grievance contesting the laying-off of a part-time clerical employee while a less senior full-time employee was retained. We held that the dominant issue was the length of the work day of the employees who would do clerical tasks. As in Bayshore and Highland Park, so here: given that the same quantity and quality of governmental services are being delivered, the dominant issue is whether an employee's work hours and compensation will be preserved.

We contrast Rahway Valley Sewerage Auth., P.E.R.C. 89-37, 14 NJPER 654 (¶19275 1988), the employer's lead case. In Rahway, several diesel room units and diesel operator positions were eliminated. Unlike this case, the work the grievant had done no longer needed to be done. We distinguish the employer's other cases

as well. Freehold Reg. H.S. Bd. of Ed., I.R. No. 85-3, 10 NJPER 526 (¶15240 1984) (interim decision concerning supervisory reorganization); Essex Cty., I.R. No. 84-10, 10 NJPER 314 (¶15150 1984) (interim decision concerning reorganization of offices and operations); Mainland Reg. H.S. Bd. of Ed., I.R. No. 84-12, 10 NJPER 395 (¶15182 1984) (interim restraint of grievance alleging inequitable assignment of line duties);[2/] Point Pleasant Bor. Bd. of Ed., P.E.R.C. No. 80-145, 6 NJPER 299 (¶11142 1980) (educational policy decision to change line of supervision); Plainfield Ass'n of School Administrators v. Plainfield Bd. of Ed., 187 N.J. Super. 11 (App. Div. 1982) (educational policy decision to transfer principal)

ORDER

The Board's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained from consideration.

DATED: Trenton, New Jersey
July 19, 1990
ISSUED: July 20, 1990

2/ We have since held that rotation of cafeteria duty is mandatorily negotiable. Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd App. Div. Dkt. No. A-2131-88T5 (10/12/89).