

P.E.R.C. NO. 92-84

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY

Petitioner,

-and-

Docket No. SN-90-41

AFSCME, COUNCIL 52, LOCAL 888,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by AFSCME, Council 52, Local 888 against Rutgers, the State University. The grievance asserts that Rutgers violated the parties' collective negotiations agreement when it eliminated eight firefighter positions which had been held by Local 888 unit members and increased the number of volunteer positions for students. On this record, it does not appear that the employer has exceeded the historical range covering the number of student volunteers or has filled any vacancies with student volunteers. Under all the circumstances, the Commission believes this dispute predominantly involves Rutgers' managerial prerogatives and not AFSCME's interest in preserving unit work from being transferred to non-unit employees.

P.E.R.C. NO. 92-84

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTGERS, THE STATE UNIVERSITY,

Petitioner,

-and-

Docket No. SN-90-41

AFSCME, COUNCIL 52, LOCAL 888,

Respondent.

Appearances:

For the Petitioner, Christine B. Mowry, Office of Employee Relations

For the Respondent, Szaferman, Lakind, Blumstein, Watter and Blader, attorneys (Sidney H. Lehmann and Arthur E. Swidler, of counsel)

DECISION AND ORDER

On January 25, 1990, Rutgers, the State University petitioned for a scope of negotiations determination. Rutgers seeks a restraint of binding arbitration of a grievance filed by AFSCME, Council 52, Local 888. The grievance asserts that Rutgers violated the parties' collective negotiations agreement when it eliminated eight firefighter positions which had been held by Local 888 unit members and increased the number of volunteer positions for students.

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

Local 888 represents the University's non-supervisory service and maintenance employees. The parties' contractual grievance procedure ends in binding arbitration.

In 1970, the Rutgers Volunteer Fire Company ("RVFC") was incorporated by students living on the Busch campus in Piscataway. The RVFC helped volunteer companies from Piscataway and Edison Townships respond to fire calls on the Busch and Kilmer campuses. Fire calls at other campuses have always been answered by fire departments from local communities, not students or Rutgers employees.

In 1972, the University Fire Department ("UFD") was formed. It had six paid firefighters who were members of Local 888's negotiations unit. The UFD responded to fire calls on the Busch and Kilmer campuses, inspected dormitories in New Brunswick, and tested fire hydrants. Despite the UFD's formation, student volunteers and local fire companies continued to respond to fire calls. These students have never been paid.

In 1979, the UFD was renamed the Department of Fire and Emergency Services and charged with responding to emergency medical calls. Two years later, the department's responsibilities were expanded to include first aid, rescues, hazardous material emergencies, and more fire safety inspections.

During the 1980's, inspections and emergency medical calls increased in volume, far outstripping fire calls. For example, in 1987, there were 18,948 fire safety inspections, 1224 ambulance responses, and 226 fire responses. Inspections increased in 1988 after the Legislature enacted a Uniform Fire Code. The chief of the fire department was instructed to perform more stringent inspections. To do that, he decided to reorganize the department.

On August 24, 1989, the University informed Local 888 that the department had been reorganized. The titles of Inspector, Fire Alarm Systems and Emergency Medical Technician ("EMT") were created and placed in Local 888's unit. The title of Captain, Fire and Rescue Services was created and placed outside Local 888's unit. Four unit employees were promoted to captain and two unit employees were promoted to the existing non-unit position of Fire Safety Specialist. Under the new structure, the four captains provide around-the-clock supervision and training for the student firefighters, the student EMTs, and the two full-time EMTs in Local 888's unit. The four Fire Safety Specialists (two more than before the reorganization) provide inspection and education services. The Inspector of Fire Alarm Systems tests alarm components and electrical systems.

As part of the reorganization, the University eliminated all eight firefighter positions. These paid positions had been staffed by employees in Local 888's unit, although the record does not reveal whether all eight positions were staffed at the time of the reorganization or whether any firefighters were laid off after the reorganization. Before the reorganization, fighting fires accounted for 3-5% of the time of paid firefighters. Since 1972, the number of student volunteers has ranged from 20 to 25. A comparison of the prior and present organizational charts shows that the number of student firefighter positions increased from 20 to 25

and that the number of student positions for providing emergency medical assistance increased from 75 to 80.<sup>1/</sup>

On September 13, 1989, Local 888 wrote the employer a letter asking who would fight fires now. The employer answered that student volunteers would respond to fire calls during the academic year and Township fire companies would respond during recesses.

On September 20, 1989, AFSCME filed a class grievance asserting that the employer had violated Article 7, paragraph 15 of the collective negotiations agreement. This paragraph provides:

Rutgers and the Union recognize the commitment of the University to students to provide part-time employment. Rutgers will not use students to undermine the bargaining unit.

The grievance asked that all vacancies caused by upgradings be filled by members of Local 888's unit.<sup>2/</sup>

The employer denied this grievance. It asserted that paragraph 15 does not apply to student volunteers or prohibit them from continuing to do the same tasks as Local 888 members; if paragraph 15 applies, it has not been violated; and the employer has a prerogative to reorganize the fire department to meet heavy demands with limited resources.

Local 888 demanded binding arbitration. This petition ensued.

---

<sup>1/</sup> The employer's response at the third step of the grievance procedure indicates that currently there are 22 student volunteer firefighters.

<sup>2/</sup> Local 888 also filed an unfair practice charge (CO-90-81). After a Complaint and Notice of Hearing issued, further proceedings were deferred pending this decision.

The employer argues that its managerial prerogative to reorganize its fire department makes this dispute not mandatorily negotiable. Local 888 responds that its interest in the preservation of unit work makes this dispute mandatorily negotiable.

At the outset of our analysis, we stress our narrow 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]

We thus do not consider the contractual merits of the grievance or any contractual defenses the employer may have. We also note and accept the parties' agreement that Article 7, paragraph 15 is mandatorily negotiable in the abstract. See Rutgers, The State Univ., P.E.R.C. No. 88-73, 14 NJPER 140 (¶19056 1988).

This dispute centers on Local 888's claim that the employer could not eliminate the paid firefighter positions in its negotiations unit and have unpaid student positions instead. Applying the balancing test set forth in Local 195, IFFTE v. State, 88 N.J. 393, 404-05 (1982), to all the circumstances of this case, we hold that this dispute is not mandatorily negotiable.

As Local 888 asserts, the preservation of unit work is ordinarily negotiable and arbitrable. See, e.g., Rutgers, the State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83). Nevertheless, binding arbitration was restrained where a grievance asserted that a student rather than an employee should have been laid off from physics-study project, see Rutgers, P.E.R.C. No. 88-73, and where a grievance asserted that student volunteers should not have been allowed to participate in a residency program, UMDNJ, P.E.R.C. No. 86-110, 12 NJPER 355 (¶17133 1986). Binding arbitration has also been restrained where the transfer of unit work was a nonseverable consequence of a managerial decision to reorganize the employer's supervisory structure. See, e.g., Freehold Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984); accord Point Pleasant Bor. Bd. of Ed., P.E.R.C. No. 80-145, 6 NJPER 299 (¶11142 1980) (transfer of supervisory duties to non-unit employees was educational policy judgment). Finally, a public employer has a prerogative to elect not to fill any vacancies. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981).

Rutgers reorganized its fire department in light of the changing and increasing demands upon its services. The department was founded in 1972 to help student volunteers and volunteer fire companies respond to fire calls, but during the last decade its

primary mission changed to fire safety inspections and emergency medical services. To reflect that change in mission, Rutgers reorganized fire department positions to add Captains for Fire and Rescue Services, EMTs, an Inspector of Fire Alarm Systems, and two more Fire Safety Specialists and to subtract the eight firefighter positions in Local 888's unit. It promoted unit employees to Captains and Fire Safety Specialists and does not appear to have laid off any unit employees. Unit employees had never held firefighter positions anywhere besides the Busch and Kilmer campuses and had always worked alongside volunteer fire companies and a force of 20-25 student volunteers. On this record, it does not appear that the employer has exceeded the historical range covering the number of student volunteers or has filled any vacancies with student volunteers. Under all these circumstances, we believe this dispute predominantly involves Rutgers' managerial prerogatives and not AFSCME's interest in preserving unit work from being transferred to non-unit employees. We accordingly restrain arbitration.

ORDER

Rutgers' request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Regan and  
Wenzler voted in favor of this decision. Commissioners Bertolino