

P.E.R.C. NO. 98-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD BOARD OF EDUCATION,

Petitioner,

-and-

BLOOMFIELD PUBLIC SCHOOLS
SERVICE ASSOCIATION,

Respondent.

Docket No. SN-97-126

SYNOPSIS

The Public Employment Relations Commission denies the request of the Bloomfield Board of Education for a restraint of binding arbitration of a grievance filed by the Bloomfield Public Schools Service Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it changed the shift schedules of custodians at various schools. A Board has a prerogative to determine the days and hours custodial services are needed and the number of custodians on duty at any given time. The Commission finds, however, that this case does not involve an educational policy determination and instead centers on a desire to reduce labor costs by changing the custodial workday to encompass early morning and evening hours.

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, Schwartz, Simon, Edelstein, Celso & Kessler, attorneys (Lawrence S. Schwartz, of counsel; Jeffrey A. Bennett and Marc H. Zitomer, on the brief)

For the Respondent, Kroll & Heineman, attorneys (Raymond G. Heineman, of counsel)

DECISION

On June 13, 1997, the Bloomfield Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bloomfield Public Schools Service Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it changed the shift schedules of custodians at various schools.

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

The Association represents the Board's custodial and maintenance employees. The parties entered into a collective

negotiations agreement effective from July 1, 1995 through June 30, 1998. The grievance procedure ends in binding arbitration of contractual disputes.

Article 7A of the parties' collective negotiations agreement is entitled "Daily Work Schedules." It provides, in part:

Building Custodians

The regular work day for full-time building personnel will be:

1. September 1 - June 30
 - (a) First Shift: 7:30 a.m. to 4:30 p.m. (one hour lunch)
 - (b) Second Shift in Elementary and Middle Schools: 10:00 a.m. to 7:00 p.m. (one hour lunch)
 - (c) Second Shift at Bloomfield High School: 10:00 a.m. to 6:30 p.m. (one half hour lunch)
 - (d) Late Shift in Secondary Schools: 2:00 p.m. to 11:00 p.m. (one hour lunch)

2. July 1 - August 31

All employees 7:00 a.m. to 4:00 p.m. (one hour lunch) except as modified by Article 7(d)(2).

During the most recent round of negotiations, the parties negotiated changes in Article 7A -- e.g. creating a Tuesday through Saturday shift at the high school and middle school and increasing the annual period during which the Board could opt to create a late shift for the grounds crew -- but did not change the quoted provisions. In the past, when coverage was required outside the regular work schedule, individual custodians and

principals would mutually agree to alter the work schedule to meet the district's needs. The Association did not object to shift alterations given such mutual agreements. When there was no mutual agreement, custodians were paid time and one-half for all hours worked outside the contractual shifts.

On July 24, 1996, the Board informed the Association that it would be altering the daily shift schedules of building custodians at various schools as follows:

The first shift at the high school would be changed from 7:30 a.m. to 4:30 p.m. to 6:30 a.m. to 3:30 p.m. (one hour lunch).

The second shift at the elementary school would be changed from 10:00 a.m. to 7:00 p.m. to 12:30 p.m. to 9:30 p.m. (one hour lunch).

The shift ultimately adopted at the high school was from 6:00 a.m. to 3:00 p.m.

The Board decided to change the custodial shift at the high school because during the entire 1995-96 school year custodians were required to begin work by at least 6:00 a.m. to open the building and heat it for the early classes that started at 7:00 a.m. Custodians were also needed to open the lunchroom for cafeteria workers and assist with early morning deliveries.

The Board cites several reasons for changing the second shift at the elementary school to extend later into the evening hours. It cites the implementation of a new Board policy which resulted in increased use of the buildings during evenings, the more efficient use of custodians when there was less activity in

the school, and the availability of custodians to provide assistance during the lunch periods, since under the new schedule, the second shift custodian arrives during the student lunch period as opposed to being on a lunch break during this period.

The Board sought to discuss the impact of the shift schedules with the Association on several occasions. When the Association refused the Board's offers, the Board determined to give a three percent salary increase to custodians working the new second shift schedule.

The Association filed a grievance alleging that the Board violated the parties' agreement by changing the shift schedules and requested a return to the contractually-agreed upon hours of work and payment at time and one-half for all hours worked outside the contractually scheduled hours. The Board denied the grievance. This petition ensued.

The Board argues that it has a managerial prerogative to determine the hours custodial staff are needed and the number of custodians on duty at a given time. The Board asserts that it has complied with its obligation to negotiate over the impact of these shift changes.

The Association argues that the Board never sought to negotiate a change in these hours during the last contract negotiations that concluded in the Spring of 1996. It further argues that there was only an occasional need for custodians to arrive early during the 1995-96 school year and also that there

was no significant change in the use of the school during after-school hours. The Association argues that the impact of the shift change is purely economic in that the custodians have lost the opportunity for overtime hours. The Association also argues that cleanup work has been transferred from the custodians to the cafeteria aides, resulting in a 70 minute increase in the aides' work day.

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 contractual merits of this grievance or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), sets forth 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]

It is undisputed that no statute or regulation preempts negotiations.

Under Local 195, the Board has a prerogative to determine the days and hours custodial services are needed and the number of custodians on duty at any given time. Given those determinations, however, the work schedules and work hours of individual employees are, in general, mandatorily negotiable. Local 195 at 412; Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1 (1973). Thus an employer may agree that if early morning or evening work is necessary, regular employees will perform that work at overtime rates. Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 95-107, 21 NJPER 227 (¶26145 1995); New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd NJPER Supp.2d 195 (¶172 App. Div. 1988); Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985); Cape May Cty., P.E.R.C. No. 83-98, 9 NJPER 97 (¶14053 1983). This case does not involve an educational policy determination and instead centers on a desire to reduce labor costs by changing the custodial workday to encompass early morning and evening hours so that the employer will not have

to pay employees overtime compensation. Contrast Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992) (board had educational policy reasons to change hours services to be delivered; individual work schedules and compensation remained negotiable so long as qualified employees available to deliver services). In the past, employees have been available, either by voluntarily changing their shifts or receiving overtime pay for hours worked beyond their regular work schedules, to cover all hours that custodial work is needed. Thus, there is no significant interference with the employer's prerogative to determine when custodial services are needed. Morris Cty. College; P.E.R.C. No. 92-24, 17 NJPER 424 (¶22204 1991); Union Beach, P.E.R.C. No. 92-129, 18 NJPER 366 (¶23160 1992); New Jersey Sports & Exposition Authority.

The Board also argues that it repeatedly offered to negotiate with the Association over shift changes but the Association refused. We have no jurisdiction in a scope of negotiations proceeding to consider whether the Association had a mid-contract obligation to negotiate work schedules. We note, however, that the Association would have an obligation to negotiate work schedules when the current contract expires.

ORDER

The request of the Bloomfield 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: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997