

P.E.R.C. NO. 99-88

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-32

HAMILTON TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Hamilton Township Board of Education for a restraint of binding arbitration of a grievance filed by the Hamilton Township Education Association. The grievance contests the elimination of two cafeteria operator positions. The parties agree that this case centers on staffing levels. The Commission concludes that such staffing levels are not 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, Destribats, Campbell, DeSantis, MaGee  
& O'Donnell, attorneys (Jay G. Destribats, on the brief)

For the Respondent, Bergman & Barrett, attorneys  
(Michael T. Barrett, on the brief)

DECISION

On November 9, 1998, the Hamilton Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Hamilton Township Education Association. The grievance contests the elimination of two cafeteria operator positions.

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

The Association represents the Board's regularly-employed personnel, including cafeteria workers. The Board and the Association are parties to a collective negotiations agreement

effective from July 1, 1997 through June 30, 2000. The grievance procedure ends in binding arbitration.

During the 1996-97 school year, the Board closed three elementary school kitchens. Each kitchen was headed by a cafeteria operator who supervised other cafeteria workers in each building. The Board retained the three cafeteria operators as full-time employees. The Board assigned two of the cafeteria operators to Nottingham High School and the third to Steinert High School. The Board asserts that in the past only one cafeteria operator was assigned at each high school cafeteria and that the assignment of the additional cafeteria operators was solely to provide them with continued employment until a position opened up because of retirement.

In 1997, the original cafeteria operator at the Nottingham High School retired and one of the elementary school cafeteria operators filled that position. In 1998, the cafeteria operator from the elementary school who had been assigned to Steinert High School was transferred to Hamilton High School due to a retirement at that school. Currently, there are two cafeteria operators at Nottingham High School, one cafeteria operator at Hamilton High School, and one at Steinert High School. The Board intends to move one of the cafeteria operators from Nottingham to Steinert when the current operator at Steinert retires. At that time, there will be one cafeteria operator at each of the high schools and one at each of the Board's junior high schools.

On August 8, 1998, the Association filed a grievance alleging that the Board had set a precedent of having two cafeteria operators at both Nottingham and Steinert and that transfers have eliminated two operator positions. The grievance further asserted that two cafeteria operator positions at each school are necessary for a smooth operation. It asks that the positions be maintained.

The principal denied the grievance. The superintendent did so as well.

On September 30, 1998, the Association demanded arbitration. The demand identified the grievance as contesting a unilateral change in working conditions. 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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item

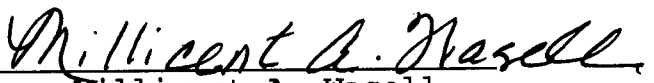
intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated 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]

The parties agree that this case centers on staffing levels. Case law applying the Local 195 balancing test establishes that such staffing levels are not mandatorily negotiable. New Jersey Sports & Exposition Auth., P.E.R.C. No. 90-62, 16 NJPER 46 (¶21022 1989); see also Local 195; Paterson PBA Police Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). The record does not suggest any basis for not applying these precedents. Accordingly, we restrain arbitration.

ORDER

The request of the Hamilton Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
 Millicent A. Wasell  
 Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: March 25, 1999  
 Trenton, New Jersey  
 ISSUED: March 26, 1999