P.E.R.C. NO. 2011-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FLEMINGTON-RARITAN REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-053

FLEMINGTON-RARITAN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Flemington-Raritan Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Flemington-Raritan Education Association. The grievance alleges that the Board violated the parties’ collective negotiations agreement when it eliminated summer work hours and compensation for certain employees, assigned those employees additional uncompensated work during the school year, and gave negotiations unit work to non-unit employees. The grievance seeks reinstatement of the summer hours, reassignment of the work back to the affected unit employees, and appropriate compensation. The Commission grants a restraint of arbitration to the extent the grievance challenges the Board’s decision to eliminate summer work for ten-month employees, but otherwise denies the request for a restraint.

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, Parker McCay, attorneys (David W. Carroll and James F. Schwerin, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys (Joel S. Selikoff and Keith Waldman, of counsel)

DECISION

On January 25, 2010, the Flemington-Raritan Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Flemington-Raritan Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it eliminated summer work hours and compensation for certain employees, assigned those employees additional uncompensated work during the school year, and gave negotiations unit work to non-unit employees. The grievance seeks reinstatement of the summer hours, reassignment of the work back to the affected unit

employees, and appropriate compensation. We issue a partial restraint of arbitration.

The parties have filed briefs and exhibits. The Board has filed the certification of its Assistant Superintendent and the Association has filed the certification of its President. These facts appear.

The Association represents the Board's certified teaching personnel, secretarial employees, school receptionists, library clerks, teacher assistants, and cafeteria/playground aides. The parties entered into a collective negotiations agreement effective from July 1, 2007 through June 30, 2010. The grievance procedure ends in binding arbitration.

Article 13, Paragraph E, Additional Summer Work, Section 1. provides:

> In order to have all special program opportunities available to students in a timely manner it will be necessary for specific individuals to work during the summer months. The individuals are: Media Specialists; Library Clerks; Computer Teachers; School Nurses; Child Study Team members; guidance; gifted and talented teachers; and, Autism Program staff.

Paragraphs E.3, E.4 and E.5 address the hours and compensation for summer work by employees in the listed titles.

On March 30, 2009, the Board proposed a budget, later adopted by the District's voters, that would eliminate the cost of summer work by employees in the titles Media Specialist,

Computer Teacher, Guidance Counselor, Gifted and Talented Teacher.

On April 20, 2009, the Superintendent wrote to the Association President advising her of the decision to eliminate the summer work of the four titles. The memorandum appended a notice, to be distributed on April 27, to 32 employees in those four titles informing them that their summer positions had been eliminated and advising that some duties and responsibilities previously performed during the summer would be handled by administrators and technology staff. Other duties would continue, but would be completed by the employees during the regular school year and the regular school day rather than during the summer. The Assistant Superintendent's certification asserts that in order to aid employees to complete tasks that had been previously performed over the summer, media centers would be closed a few days before the end of the school year.

On April 28, 2009, the Board removed summer assignments from unit members who had worked up to 80 hours during summer breaks performing technology maintenance duties.

On or about June 22, 2009, the Board posted job notices for the positions Summer District Technology Maintenance and Summer District Technology Support. The Board hired employees into these positions that are not represented by the Association.

The Assistant Superintendent states that these positions existed before the summer of 2009. He states that beginning in the summer of 2006, students filled these positions and did so again in 2009. They performed cleaning and maintenance tasks.[1/] The administrator states that those duties were never assigned to teachers and there is no overlap in the work of the two groups.[2/]

The Association President's certification asserts that the summer work in question had been performed by unit employees for at least ten years.[3/] She further certifies that some summer

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1/ According to the Assistant Superintendent, Summer District Technology Maintenance employees cleaned televisions, VCRs, carts, cassette recorders, earphones, laptops and other media equipment. Summer District Technology Support employees cut custom cables, ran cables from walls to devices and around computer labs, unpacked and set up new computers, and moved equipment to storage areas.

2/ The Assistant Superintendent lists these tasks as the work teaching staff had performed during the summers prior to 2009: downloading patches to lab computers; setting up servers with new folders and rebuilding teacher folders; archiving students' work; assisting new teachers in setting up classroom machines and hubs; creating printing assignments and mapping; ordering general technology for the upcoming year; helping teachers complete and upload web pages; taking inventory; and creating documents for the administration of laptop carts and the lab. In addition, at one school's tech lab, teacher's summer assignments included: timing and tightening robots; cleaning and refilling aquariums; maintaining farm simulators; cleaning all workstation storage units and student cabinets; and restocking, reorganizing and taking inventory.

3/ The employees held the titles Media Specialist, Computer Teacher;,Guidance Counselor, and Gifted and Talented Teacher. The other titles listed in Article 13.E.1 performed summer work in 2009.

work performed by unit employees was shifted to administrators, Technology Department employees, and student-age summer hires, none of whom were members of the negotiations unit. The Association President, who holds one of the teaching positions affected by the Board's action, asserts that computer maintenance work performed by the student-age summer hires had been part of the regular summer workload of computer teachers. She further asserts that in order to perform additional work during the regular school year, the affected teaching staff had to complete those tasks on personal time at home, on weekends, and/or by giving up portions of their preparation or duty-free periods.

On June 22, 2009, the Association filed a grievance alleging that the actions described in the April memorandum violated several contract articles by eliminating summer work and compensation for the affected titles and requiring that the affected unit members perform additional duties during the regular school year thereby increasing workload without additional compensation. The grievance asserts that shifting some of the duties to non-unit employees also violated the agreement. The grievance seeks: reinstatement of the contracted summer hours and appropriate compensation; negotiations over any changes to the contract; to have unit work remain within the unit; and an appropriate make-whole remedy.

On July 2, 2009, the Superintendent denied the grievance and the Association filed it with the Board. On August 6, the new Superintendent invited Association representatives to meet with the Board's Personnel Committee to discuss the grievance. On August 31, the Committee chair advised the Association that its grievance had been denied. On October 7, the Association demanded arbitration. This petition ensued.[4/]

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 cannot consider the merits of the grievance or any contractual defenses the Board may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), determines whether a subject is mandatorily negotiable:

4/ This dispute is also the subject of an unfair practice charge, Docket No. CO-2009-417. The processing of that case has been stayed pending our determination.

> [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.

The Board characterizes its action as a non-negotiable reduction in force (RIF) of summer work for some teaching staff members undertaken for reasons of economy and asserts that its decision is not subject to binding arbitration. The Board acknowledges that to the extent its actions increased the workload of the affected teaching staff during the regular school year, that issue is mandatorily negotiable and arbitrable, but argues that the decision to eliminate the summer work is not. It maintains that the unit work doctrine is inapplicable because no affected employees lost their jobs to non-unit employees.

The Association responds that its grievance involves the mandatorily negotiable issues of cutting the work year and negotiated compensation, adding uncompensated work load, and protecting unit work from being transferred to non-unit employees for economic reasons. It asserts that contractual agreements on

these issues are enforceable through binding arbitration. The Association disputes the Board's labeling of its action as a RIF, but notes that even if it can be so characterized, changes in terms and conditions of employment that are severable from managerial decisions must be negotiated.

Where school district employees have a work year that extends beyond the regular school year, reductions in the work year and the compensation employees are paid involve mandatorily negotiable and legally arbitrable terms and conditions of employment. Piscataway Tp. Bd. of Ed. and Piscataway Principals Ass'n, 164 N.J. Super. 98, 101 (App. Div. 1978). This case, however, does not involve a reduction in a 12-month work year. The disputed work has been characterized by the parties as "Additional Summer Work." South Brunswick Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984), held that the determination of whether and to what extent a board needs the services of 10-month, non-administrative employees during the summer is within the Board's managerial prerogatives. Accord Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER (¶10276 1979), aff'd in pert. part, 180 N.J. Super. 440 (App. Div. 1981) (board had prerogative to reduce ten-month employee's summer work hours). Accordingly, the Association may not arbitrate a claim that the employees are contractually entitled to summer work.

We treat separately the Association's unit work claims. The Board has acknowledged that its actions were motivated by a desire to save money. A grievance challenging an employer's decision to move unit work to non-unit employees for economic reasons is a mandatorily negotiable issue and is legally arbitrable. See State v. IFPTE, Local 195, 169 N.J. 505 (2001) (sustaining grievance arbitration award holding that employer violated contract by giving correctional workers' overtime opportunities to a non-unit supervisor); see also Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980) (transfer of unit work to non-unit employees to save overtime expenses involved mandatorily negotiable term and condition of employment).[5/] Contrast Jersey City and POBA and PSOA, 154 N.J. 555 (1998) (transfer of dispatching work from police to non-unit civilians, motivated by non-economic decision to place more officers on the street, was non-negotiable exception to unit work doctrine). Thus, the Association's assertion that the Board has transferred unit work to non-unit employees is legally arbitrable.[6/]

5/ The Board's assertion that the unit work doctrine applies only where employees lose their jobs does not comport with the holding of Rutgers.

6/ Given our limited scope of negotiations jurisdiction, we make no factual determinations as to which non-unit employees (administrators, technical and student-age employees), if any, performed the work that employees in the (continued...)

In addition, as the Board concedes, claims by the affected employees that the elimination of their summer work and the directive that it be performed during the regular school year involves mandatorily negotiable workload issues. See Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd NJPER Supp.2d 225, 230 (¶196 App. Div. 1990) (compensation claim for extended workday and increased homeroom duty periods were arbitrable); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. den. 111 N.J. 600 (1988) (requiring administrator to teach a class caused by teaching staff vacancy involved mandatorily negotiable workload issue); Linden Bd. of Ed., P.E.R.C. No. 80-47, 5 NJPER 483 (¶10244 1979), aff'd NJPER Supp.2d 83 (¶64 App. Div. 1980) (imposition of additional record keeping duties to aid in monitoring of basic skills constituted negotiable workload increase); Newark Bd. of Ed., P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd

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6/ (...continued)
four affected titles had completed in prior summers, or whether any reassignment of that work provides grounds to sustain the unit work claim in the Association's grievance. Nor do we have jurisdiction to consider the Board's assertion that the Association did not seek negotiations over the change between April 20 and 27, 2009, the dates when, respectively, the Association President was notified of the Board's plan and when the employees were advised that they would not work that summer.

<u>NJPER Supp</u>.2d 72 (¶55 App. Div. 1980) (requiring teachers to remain with their classes while art and music teachers taught their students cut their preparation time and was mandatorily negotiable). Thus, the Association may argue to an arbitrator that employees experienced uncompensated workload increases.

ORDER

The request of the Flemington-Raritan Regional Board of Education for a restraint of arbitration is granted to the extent the grievance challenges the elimination of summer work for 10-month employees. The request is otherwise denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Krengel was not present.

ISSUED: September 23, 2010

Trenton, New Jersey