

P.E.R.C. NO. 2011-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EGG HARBOR
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-069

TOWNSHIP OF EGG HARBOR
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Egg Harbor Board of Education for a restraint of binding arbitration of a grievance filed by the Township of Egg Harbor Education Association. The grievance asserts that the Board imposed additional duties on teachers by requiring them to participate in a Professional Learning Community program during previously unassigned time. The Commission holds that because the grievance does not contest the implementation of the program and is limited to compensation for lost unassigned time, it involves a mandatorily negotiable subject and is legally arbitrable.

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, Cooper Levenson, attorneys (Amy L. Houck, of counsel)

For the Respondent, Myron Plotkin, NJEA UniServ Representative, consultant

DECISION

On March 5, 2010, the Egg Harbor 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 Egg Harbor Township Education Association. The grievance asserts that the Board imposed additional duties on teachers during previously unassigned time. We deny the request as the grievance is limited to a claim for compensation.

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

The Board operates a K-12 school district. The Association represents the Board's certificated personnel and other

employees. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 2009 through June 30, 2012.^{1/} The grievance procedure ends in binding arbitration.

Article XI, "Teaching Hours and Teaching Load," provides, in relevant part:

A. The arrival and departure time for all teachers shall be established by the Superintendent and his administration. The total in-school work day shall not consist of more than seven (7) hours.

B.1. Any teacher employed in both morning and afternoon sessions shall be entitled to a duty-free lunch period during the hours normally used for lunch period in school; such duty-free lunch period shall be not less than thirty (30) minutes, except in a school where the lunch period for pupils is less than thirty (30) minutes, in which case the duty-free lunch period shall not be less than the lunch period time allowed pupils.

* * *

D. Elementary teachers shall have preparation periods only when special teachers are in the classroom. In no case shall any teacher have a special teacher assigned less than five (5) periods a week.

* * *

F. The normal daily assignment of teachers assigned to the high school will be five (5) teaching periods, one (1) duty period, one (1) preparation period, one (1) lunch period and a homeroom period. When program and

^{1/} At the time the petition was submitted, the new agreement had been approved by not finalized so a copy of the parties' July 1, 2006 through June 30, 2009 agreement was filed.

staffing require, a teacher may be assigned a sixth teaching period, but such teacher shall be relieved of duty assignments.

G. Teachers will be provided with at least two (2) days notice of planned meetings to minimize the impact of lost preparation periods. Teachers shall be compensated at the rate of . . . \$40.41 in 2008-2009.^{2/}

H. The Board will attempt to equitably distribute the workload within the district.

During the 2009-2010 school year, the Superintendent implemented a program called "Professional Learning Communities" (PLC). The program requires teachers to meet once a week for approximately 30 minutes. During these meetings, teachers work collaboratively and discuss data collected, student progress and current programs. Specific assignments are sometimes given to the groups and are returned to building principals on completion. A written report of what occurs at each meeting and what is planned for the next meeting is prepared for the building principal. At some schools, the meetings are incorporated into the teachers' regular work day so there is no resulting loss of unassigned or preparation time. However, at other schools the meetings are held during unassigned time.

Before the start of the 2009-2010 school year, the Superintendent and Association President had discussions about the program. The Association acknowledged that the

^{2/} We do not know whether the new agreement changed this rate.

administration could require participation in the program, but asserted that the Board was required to negotiate with the Association over compensation for any lost unassigned time.

On October 26, 2009, the Association filed a grievance asserting that implementation of the program caused a majority of the certified staff to either assume additional duty time or to lose unassigned time. The grievance asserted that the Board's action violated Article XI, Sections F and H and that if the Board maintains the program, it is required to compensate professional staff in accordance with Article XI, Section G. The Board denied the grievance and the Association demanded arbitration. 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.

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:

[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 argues that: (1) the time the teachers are required to participate in PLC activities entails a de minimis loss of 10 to 15 minutes a week of previously unassigned time; and (2) requiring the Board to compensate teachers for alleged losses in unassigned time is not severable from the educational decision to implement the program during the course of the teachers' paid work day.

The Association responds that implementation of the program has deprived the teachers of 18 hours per year of unassigned time. The Association argues that compensation for this loss of time would not significantly interfere with, and is severable from, the Board's educational decision to implement the program.

Provisions setting teacher workload limits are mandatorily

negotiable. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26 (App. Div. 1977). Workload increases have been measured by changes in the length of the workday, the number of teaching periods, or the amount of pupil contact time. See, e.g., Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) (increase in workday); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp. 2d 258 (¶214 App. Div. 1991) (increase in pupil contact time).

Commission and court cases uniformly hold that where a duty period is replaced by an instructional period, or when preparation time is replaced by either a duty period or instructional time, grievances seeking compensation for alleged violations of teaching load agreements or practices are legally arbitrable. See Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976) (loss of unassigned time); 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 (¶196 App. Div. 1990) (compensation for increase length of homeroom period); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd NJPER Supp. 2d 160 (¶141 App. Div. 1986); Middletown Tp. Bd. of Ed., P.E.R.C. No. 98-74, 24 NJPER 19 (¶29013 1997); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312

1984); Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶14057 1983).

Because implementation of the PLC program is not at issue in the arbitration and because the Association's demand for arbitration is limited to compensation for lost unassigned time, the grievance concerns a mandatorily negotiable issue and we therefore decline to restrain binding arbitration.

We emphasize that we do not determine the merits of the grievance. In a scope of negotiations proceeding, we do not evaluate the employer's claim that the loss of time is insignificant or that the contract permits the assignment without additional compensation. Those issues are for the arbitrator.

ORDER

The request of the Egg Harbor Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Chair Hatfield abstained.

ISSUED: November 23, 2010

Trenton, New Jersey