

P.E.R.C. NO. 2024-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY VOCATIONAL-TECHNICAL  
SCHOOLS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2023-030

UNION COUNTY VOCATIONAL-TECHNICAL  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part and denies in part the request of the Union County Vocational-Technical Board of Education's request for a restraint of binding arbitration of a grievance filed by the Union County Vocational Technical Education Association. The grievance contests the Board's decision to implement a class coverage schedule in response to unexpected teacher absences that required certain teachers to switch their daily curriculum and preparation periods when required to cover another class. The Commission finds that the order of the daily class schedule is a non-negotiable managerial prerogative and restrains arbitration to the extent the grievance seeks to prohibit the Board from switching the schedules. However, the Commission declines to restrain arbitration over the severable issue of compensation for working during a preparation period.

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, Florio Perrucci Steinhardt  
Cappelli Tipton & Taylor, LLC, attorneys (Robert K.  
Devaney, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys  
(Sanford Oxfeld, of counsel; Samuel B. Wenocur, on the  
brief)

DECISION

On March 16, 2023, the Union County Vocational-Technical Schools Board of Education (Board) filed an amended scope of negotiations petition (categorized as a joint petition for scope of negotiations determination by the parties) seeking a restraint of binding arbitration of a grievance filed by the Union County Vocational-Technical Education Association (Association). The grievance asserts that the Board violated Article 6(C)(1) of the parties' collective negotiations agreement (CNA) by failing to compensate teachers who were required to switch their curriculum and preparation periods in order to assist with class coverage

due to teacher absences.

The Board filed briefs, exhibits and the certifications of its Superintendent, Gwendolyn S. Ryan, and its counsel, David J. Kass<sup>1/</sup> and Robert K. Devaney. The Association filed a brief, exhibits and the certification of its President, Julie Klikus. These facts appear.

The Association represents all personnel, both full and part time, presently employed by the Board, including: Coordinators of: Cooperative Education, Placement, Apprenticeship, Structured Learning Experience; Counselors, Guidance Counselors, Recruiter, Admissions Coordinator, Nurses, School-to-Work Coordinator, 10-month secretaries, 12-month office staff, social workers and teachers. The Board and Association are parties to a CNA in effect from July 1, 2020 through June 30, 2024. The grievance procedure ends in binding arbitration.

Article 6 of the parties' CNA, entitled "Teacher Work Year and Work Day," provides in pertinent part:

C. Other Provisions

1. Teachers asked to cover a class during their own preparation period will be compensated at the negotiated hourly rate. One forty-two (42) minute period ( $\frac{1}{2}$  of one (1) block) will equal one hour of compensation.

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<sup>1/</sup> Initially, David J. Kass was of counsel for the Petitioner on its initial brief. Robert K. Devaney substituted as counsel and filed the reply brief on its behalf.

The Superintendent certifies to the following facts. The CNA provides that all full-time teachers' schedules, in addition to their instructional periods, "will include one (1) preparation period, one (1) curriculum period and one (1) duty-free lunch period of at least thirty-five (35) minutes." Curriculum periods and preparation periods have substantially different functions.

According to the Superintendent, under the supervision of Curriculum Coordinators and administrators, teachers have the autonomy to make certain curricular and instructional decisions. Teachers are expected to update their curriculum, as a fluid process, which documents instructional activities, assessments, resources and career skills into their curriculum. Curriculum periods exist so that teachers have time to update curriculum documents. Teachers are not assigned any specific duties during their curriculum period, such that other assignments are expected if they are up to date with curriculum expectations. The Superintendent is not aware of a teacher ever reporting that they were unable to complete curriculum updates over the course of a year due to a high volume of class coverage assignments. Curriculum periods are generally preferred to use for class coverages as opposed to preparation periods.

The Superintendent also certifies that preparation periods are utilized for all tasks necessary to prepare for the instruction of the courses that teachers are assigned to teach

throughout the school year. While not an exhaustive list, preparation periods are utilized for lesson planning, assessment planning, collaboration with colleagues, grading, and preparing reports. Accordingly, the Board greatly values the time teachers need to adequately plan and prepare for classroom instruction and effective learning activities. Given the importance of the preparation period, the Board and administration do not utilize those periods for class coverage in the event of an emergency staff shortage. In the rare instance where there is no other option, teachers are compensated in accordance with Article 6(C) (1) of the CNA.

The Superintendent further attests that since she has been employed by the Board, the common practice is that curriculum periods, rather than preparation periods, are utilized for class coverage due to unplanned teacher absences. When class coverage is necessary, the administration seeks coverage from a teacher who has their scheduled curriculum period during that time slot. If no such employee is available, and the only employee available is asked to cover a class during their regularly scheduled preparation period, the administration will switch that employee's curriculum and preparation periods such that the employee retains their preparation period. The Board and administration aver that this practice is utilized because of the

significance of the preparation period, and not to avoid compensating employees.

The Association President certifies to the following facts. She is a teacher at the Union County Academy for Information Technology (AIT). Teachers asked to perform class coverage during their curriculum periods are not entitled to any additional pay under the CNA. She agrees that historically, the Board has not frequently assigned teachers to other tasks, including class coverage, during a teacher's prep period. However, on those occasions, the parties have negotiated into the CNA that teachers are to receive additional pay for this type of work.

The Association President further attests that since the beginning of the 2022-2023 school year, the Board had difficulty finding substitutes for teacher absences at the Union County Career and Technical Institute (UCCTI). The Board developed a calendar in which its other four schools, including AIT, would rotate to provide the necessary coverage. On January 5, 2023, AIT Teacher Supervisor Paul DeFrancesco sent an email to the AIT teachers, including the Association President, about the Board's plan to have teachers from its other schools, including AIT, rotate 4 weeks of coverage over the four months remaining in the school year. The email included a link with a spreadsheet of the teachers' coverage schedule.

The Association President contends that the 2022-2023 school year is the first year that she personally or the Association as an entity was aware of the Board making teacher coverage class lists well ahead of time. For example, during the 2020-2021 and/or 2021-2022 school years, when dealing more significantly with the COVID-19 pandemic, teacher coverage assignments were assigned on an ad hoc basis. In the past, the Board has hired substitute teachers, who could cover one or multiple classrooms, or broke up the affected class and placed the students with other classes.

According to the Association President, almost all teachers have a daily preparation period and curriculum period scheduled back-to-back within a single block period. For example, a teacher might have 9th period Curriculum and 10th period Prep in the 9/10 schedule block. On January 5, 2023, in emails to the AIT faculty, DeFrancesco admitted that the Board had made some of the coverage assignments during a teacher's prep rather than curriculum period. He then directed those employees, because they were being given advance notice, to switch their curriculum and prep periods. This affected teachers on about two dozen occurrences and deviated from traditional practice, where the Board had never changed a teacher's schedule absent additions or reductions to the school schedule.

The Association President certifies that she was among the

AIT staff that was asked to switch her curriculum and prep periods. She informed DeFrancesco that under the CNA she expected to be paid one hour compensation for the work during the prep period. The school decided to switch her assigned coverage period so that it would occur during her regularly scheduled curriculum period.

The Association President further attests that she is personally aware of at least one instance during the 2021-2022 school year when an Association member was paid according to Section 6(C)(1) for performing coverage during her scheduled prep period where the relevant periods were switched. At no point during these years did the Association ever authorize or consent to the Board switching a teacher's prep and curriculum period or otherwise use a teacher during his or her prep period without payment under Section 6(C)(1). Rather, throughout her time as Association Secretary and then President, she is aware of the Association's opposition to any efforts by the Board to circumvent paying Association members under Section 6(C)(1).

In the Superintendent's supplemental certification, she certifies that when a teacher has a preparation period in any given workday, Article 6(C)(1) does not apply, and the teacher is not entitled to any additional compensation. If teachers have been compensated for working during their switched preparation period, while still receiving a preparation period that same day

and working no additional hours, this would be a result of a payroll error and not a common practice, Board policy, or contractual obligation.

According to the Superintendent, when teachers are asked to switch their preparation period and curriculum periods, they are not required to work outside of their job descriptions. This practice results in no additional hours worked by the teacher.

On January 31, 2023, the Association filed a grievance alleging the following:

According to Article 6.C.1 of the CBA, "Teachers asked to cover a class during their own preparation period will be compensated at the negotiated hourly rate. One forty-two (42) minute period ( $\frac{1}{2}$  of one (1) block) will equal one hour of compensation. To avoid the financial obligations to which it agreed in the bargaining process, our members have been instructed not to request the payment mandated in the CBA, but rather to switch their prep and curriculum periods."

As relief, the Association requested that the Board "[c]ease and desist from switching schedules and compensate any employee covering during a scheduled prep period." On March 13, 2023, the Association filed a request for a panel of arbitrators pursuant to Article 3 of the parties' CNA. 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 do not consider the merits of the grievance or any contractual defenses the employer may have.

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 Board asserts that the subject matter of the grievance is a non-negotiable matter of government policy because it does not intimately and directly affect the work and welfare of its

teachers. Specifically, the Board contends that the current practice of rearranging a teacher's work schedule does not increase the length of the workday or otherwise affect working hours. The purpose of the schedule change is to preserve the preparation period over the curriculum period, the former of which the Board admits does intimately and directly affects the work of teachers.

The Board further alleges that any negotiated agreement on the instant subject matter significantly interferes with the determination of governmental policy. The Board argues that the schedule changes do not have an effect on employee workload and that by ensuring the preservation of the preparation period, the Board's goal of "providing students with a thorough and efficient education" is effectuated.

In response, the Association argues that work schedules of public employees are mandatorily negotiable and that additional compensation for higher level or different work does not significantly interfere with governmental policymaking. Even where a public employer may have a non-negotiable managerial prerogative to make employee assignments, the Association avers that the effects of that decision on compensation are mandatorily negotiable and therefore arbitrable. The Association also contends that the Board has failed to show a significant educational purpose promoted by its unilateral "switching" of

curriculum and preparation periods and that instead was motivated by budgetary considerations.

In reply, the Board furthers its argument that the purpose of the switch is to ensure teachers have adequate time to prepare for teaching, something that is critical to maintain an environment that promotes a "thorough and efficient education." The Board attempts to distinguish the instant matter from authority cited by the Association, arguing that in this case, unlike others, "teachers are performing the same work as they normally would, only at different times of the workday."

We find that the grievance objects to two severable aspects of the Board's method of covering classes due to teacher absences, including a demand that the Board "[c]ease and desist from switching [preparation and curriculum] schedules" while also requesting that the Board "compensate any employee covering during their scheduled prep period." We address each in turn.

As a general matter, a public employer has the non-negotiable managerial right to assign specific tasks and work to employees. See Local 195, supra, 88 N.J. at 408; Paterson PBA, Local 1 v. Paterson, 87 N.J. 78, 97 (1981); and Franklin Tp. v. Franklin Tp. PBA Local 154, 424 N.J. Super. 369, 380 (App. Div. 2012). In the educational setting, we have previously found that "a school board has a prerogative to determine the structure of the school day." Morris Hills Reg'l Bd. of Ed., P.E.R.C. No.

2012-012, 38 NJPER 153 (¶43 2012). Generally, arbitration of grievances "seek[ing] to undo the schedule changes or assignments made by" a board of education will not be permitted as it significantly interferes with managerial prerogative. Manville Bd. of Ed., P.E.R.C. No. 2017-62, 43 NJPER 432 (¶120 2017).

In this case, it is undisputed that the Board mandated that full-time teachers within the district supervise classrooms for other absent teachers instead of hiring substitutes or employing other measures to ensure adequate supervision of students. It is further undisputed that teachers were, at times, required to switch their curriculum and preparation periods so that a teacher would preserve their preparation period. We find that the Board has the managerial prerogative to alter teaching assignments, including by altering the schedules of teachers to ensure that all students in the Board's care are adequately supervised. Thus, to the extent the grievance seeks an order from the arbitrator compelling the Board to cease and desist from switching preparation and curriculum periods, arbitration is restrained because the subject matter is major educational policy and non-negotiable.

However, we find that the Association's severable claim for additional compensation may proceed to arbitration because it involves a question as to the Board's alleged violation of Article 6.C.1.. Arbitration of this contractual compensation

question does not significantly interfere with the Board's managerial prerogative where it is undisputed that the Board obtained the necessary class coverage.

We have held that "[s]o long as qualified employees are available to meet the employer's coverage needs, the employees have the right to negotiate over who works what hours and how much they are paid for those hours." Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992). Along this principle, we have held that teachers may negotiate additional compensation for increases in teaching load, measured by "changes in the length in the workday, the number of teaching periods, or the amount of pupil contact time." Wayne Tp. Bd. of Ed., P.E.R.C. No. 2017-48, 43 NJPER 337 (¶95 2017) (emphasis added); see also Bridgewater-Raritan Bd. of Ed., P.E.R.C. No. 83-102 9 NJPER 104 (¶14057 1983) (noting "[t]he Commission and the Courts have repeatedly held that an increase in pupil contact time or workload, as a result of the substitution of one form of duty for another, is a mandatorily negotiable term and condition of employment.")

Thus, we find that the Board had a managerial prerogative to direct teachers to switch their prep and curriculum periods to secure adequate class coverage. However, the issue of whether additional compensation may be due to pursuant to Article 6.C.1.

of the CNA for Association members who were subject to that switch is legally arbitrable.

ORDER

The request of the Union County Vocational-Technical Schools Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the Board's authority to direct teachers to switch their curriculum and prep periods for class coverage. It is denied with respect to the issue of compensation under Article 6.C.1. of the CNA.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Higgins, and Papero voted in favor of this decision. None opposed. Commissioner Ford recused himself. Commissioner Voos was not present.

ISSUED: September 28, 2023

Trenton, New Jersey