

P.E.R.C. NO. 86-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAINLAND REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Petitioner-Public Employer,

-and-

Docket No. SN-84-111

MAINLAND TEACHERS ASSOCIATION,

Respondent-Employee Organization.

SYNOPSIS

The Public Employment Relations Commission, adopting a designee's recommendation in the absence of exceptions, restrains binding arbitration of a grievance which the Mainland Teachers Association filed against the Mainland Regional High School Board of Education. The grievance asserted that the Board violated its collective negotiations agreement with the Association by failing to assign line duty equitably.

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Respondent-Employee Organization.

Appearances:

For the Petitioner, Pachman & Glickman, Esqs.
(Martin R. Pachman, of Counsel)

For the Respondent, Eugene J. Sharp, NJEA UniServ
Representative

DECISION AND ORDER

On May 21, 1984, the Mainland Regional High School Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain binding arbitration of a grievance which the Mainland Teachers Association ("Association") filed. The grievance asserts that the Board violated its collective negotiations agreement with the Association by failing to assign line duty equitably.

Simultaneously with the filing of the petition, and pursuant to N.J.A.C. 19:14-3.10, the Board also filed an application seeking a temporary stay of arbitration pending the final decision. On June 12, 1984, Commission designee Arnold H. Zudick granted the Board's motion. I.R. No. 84-12, 10 NJPER 395 (¶15182 1984).

On June 14, 1984, the Association filed a motion with the Commission requesting an evidentiary hearing.

On July 24, 1984, the Chairman granted this motion and issued a Notice of Hearing.

On December 17, 1984, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties argued orally, examined witnesses and introduced exhibits. The Board filed a post-hearing brief.

On July 26, 1985, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-3, 11 NJPER ____)¶ ____ (1985). He recommended a permanent restraint of arbitration because he found that the assignment of line duties is a managerial prerogative.

The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before August 8. No exceptions were filed.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-7) are accurate. We adopt and incorporate them here.

We agree with the Hearing Examiner's analysis that the gravamen of the grievance involves a non-negotiable managerial prerogative. Accordingly, we will restrain arbitration of the grievance.

ORDER

The Mainland Regional High School Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves was not present. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
October 17, 1985
ISSUED: October 18, 1985

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAINLAND REGIONAL HIGH SCHOOL
BOARD OF EDUCATION,

Petitioner-Public Employer,

-and-

Docket No. SN-84-111

MAINLAND TEACHERS ASSOCIATION,

Respondent-Employee Representative.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the assignment of teachers to line duties (cafeteria duty, study hall duty etc.) is a managerial prerogative and is neither negotiable nor arbitrable. The Hearing Examiner therefore recommended that the Commission permanently restrain an arbitration intended to review a grievance concerning line duty assignments.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

STATE OF NEW JERSEY
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAINLAND REGIONAL HIGH SCHOOL
BOARD OF EDUCATION,

Petitioner-Public Employer,

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Docket No. SN-84-111

MAINLAND TEACHERS ASSOCIATION,

Respondent-Employee Representative.

Appearances:

For the Petitioner
Pachman & Glickman, Esqs.
(Martin R. Pachman, of Counsel)

For the Respondent
Eugene J. Sharp, NJEA UniServ Representative

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission ("Commission") on May 21, 1984, by the Mainland Regional High School Board of Education ("Board") seeking a determination of whether a clause in the collective agreement between itself and the Mainland Teachers Association ("Association") concerning line duty assignments was arbitrable and negotiable within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

The Association had filed a grievance on September 28, 1983 (Exhibit C-3) alleging a violation of specific contractual clauses, and an arbitration was scheduled for July 10, 1984. However, simultaneous with filing the instant Petition, the Board filed a request for interim relief seeking a stay of the arbitration. The request for interim relief was assigned to me for consideration.

On June 7, 1984 the parties filed briefs with the Commission regarding the Scope Petition (Exhibits C-2 and C-4), and on June 12, 1984 I issued a decision In re Mainland Reg. H. S. Bd.Ed., I.R. No. 84-12, 10 NJPER 395 (¶15182 1984), granting the Board's motion for a stay of arbitration. I found that reasonable bases existed to stay the arbitration because both the Commission and courts have held that the assignment and reassignment of teachers is a managerial prerogative.^{1/}

On June 14, 1984 the Association filed a Motion with the Commission requesting an evidentiary hearing in the scope matter

^{1/} In deciding to restrain the instant arbitration I noted that the New Jersey Supreme Court has held that the assignment or reassignment of personnel, particularly from one job assignment to another, is a managerial prerogative. In re IFPTE Local 195 v. State of N.J., 88 N.J. 393, 415-416 (1982); Ridgefield Park Ed. Assn. v. Ridgefield Park Bd.Ed., 78 N.J. 144, 156 (1978), State of N.J. v. State Supervisory Employees Assoc., 78 N.J. 54, 92-96 (1978). I further noted that the Commission has specifically held that the right to assign teachers to non-teaching duties, and the question of which personnel to assign, are managerial prerogatives. In re Mahwah Bd.Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983);

(Footnote continued on next page)

(Exhibit C-5). The Association argued that numerous factual issues existed that could only be decided after a full hearing.^{2/}

The Commission granted the Association's Motion and issued a Notice of Hearing on July 24, 1984 (Exhibit C-1). The hearing was

(Footnote continued from previous page)

In re Perth Amboy Bd.Ed., P.E.R.C. No. 82-82, 8 NJPER 573 (¶13264 1982); In re Monroe Twp. Bd.Ed., P.E.R.C. No. 80-146, 6 NJPER 301 (¶11143 1980).

^{2/} In its request for a hearing the Association argued that a hearing was necessary because the Commission needed to determine the answers to the following seven (7) questions prior to making any decision on the arbitrability/negotiability issue. Those questions are:

1. Is the issue of equity in assignments of line duty at Mainland different from the right of the employer to make assignments?
2. Is the assignment of line duty at Mainland made on a random basis?
3. Does the possession of a certificate issued by the New Jersey State Board of Examiners qualify a teacher to be assigned to any line duty at Mainland?
4. What are the "attributes of individual teachers" which are matched with the line duty assignments to be made?
5. If different attributes are necessary for the assignment of different line duties, do not the duties differ in difficulty, arduousness, and desirability?
6. Does the resolution by the parties of the 1981 grievance on the same issue show that the matter can be resolved through the grievance procedure of the agreement without harm to the exercise of its prerogatives on the part of management?
7. Did the board of education have knowledge of the alleged illegality of the subject matter of equity in assignments at the time it negotiated and executed the 1982-84 agreement?

held in this matter on December 17, 1984 in Trenton, New Jersey, at which time the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally.^{3/} The transcript was received on February 22, 1985, and the Board submitted a brief by April 12, 1985.^{4/}

A Petition for Scope of Negotiations Determination having been filed with the Commission, a question of scope of negotiations exists, and after hearing, and after consideration of the post-hearing brief, this matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record I make the following:

Findings of Fact

1. The Mainland Regional High School Board of Education is a public employer within the meaning of the Act.
2. The Mainland Teachers Association is a public employee representative within the meaning of the Act.
3. The Board and Association were parties to a collective negotiations agreement (Exhibit J-1) effective July 1, 1982-June 30, 1984 covering all certified personnel employed by the Board.

^{3/} The hearing was originally scheduled herein for September 11, 1984. However, due to a joint request of the parties on or about September 10, 1984, the hearing was postponed without subsequent date to allow the parties time to resolve a serious negotiations dispute. That dispute was resolved by late October 1984, and the hearing was rescheduled by agreement for December 17, 1985.

^{4/} Although the hearing closed on December 17, 1984, the transcript was not received until February 22, 1985. That delay is attributable to the reporting service, not the Commission.

Article 16, Sec. A, para. 4 of J-1 provided that:

4. Teachers may be assigned a regular line duty and an occasional detention hall duty on an equitable basis. In the event all line duties are covered, and there are excess staff members available, assignments shall be made on the basis of seniority.

Article 2 Sec. E of J-1 provided that:

E. Except as this agreement shall hereafter otherwise provide, all terms and conditions of employment applicable on the effective date of this agreement to employees covered by this Agreement as established by the rules, regulations or policies of the Board in force on said date, shall continue to be applicable during the term of this agreement, except that proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

4. The facts show that teachers employed by the Board are assigned a specific line duty for a full academic year. The primary line duties include cafeteria (lunch) duty, study hall duty, corridor or hall patrol, and attendance duty (Transcript ("T") p. 12). Additional line duties that are generally assigned to particular people because of their particular expertise include audio visual repair, display case coordinator, the school store, and printing the absentee list.

There are normally eight teaching periods per day. Each teacher has five classes per day, a preparation period, a lunch period, and a line duty. The Board makes the line duty assignments after it has assigned the teaching periods and determined the

teacher's own lunch and preparation periods (T pp. 140-168). The record shows that the High School Principal, Howard Sherman, makes line duty assignments based primarily upon his assessment of the strengths and weaknesses of the available teachers (T p. 40). He admitted, however, that some line duty assignments, particularly cafeteria duty, fall to certain teachers because they happen to be the only teachers available after class assignments and lunch periods, and preparation periods are determined (T p. 154).

Sherman further testified that line duty assignments could not be made first because that would adversely affect the Board's ability to make all of the necessary class assignments and course offerings (T pp. 141, 158, 164).

5. The undisputed evidence shows that cafeteria duty is considered the most onerous line duty assignment (T pp. 58, 66, 79), and that certain teachers have been assigned that duty several years in a row. The Association filed C-3 and alleged a violation of Art. 16, Sec. A(4), and Art. 2, Sec. E of J-1 and argued that pursuant to those contractual clauses no teacher should receive the same line duty assignment year after year. Rather, the Association argued that line duty assignments should be made on an equitable basis so that specific assignments are rotated every year.

6. The record shows that on October 21, 1981 the Association filed a grievance (Exhibit R-1) alleging a contract violation due to the inequity of line duty assignments. That grievance alleged the same contract violation as alleged in C-3.

R-1 was processed to the superintendent's level where it was resolved. Apparently the Association had alleged that thirty (30) teachers had received inequitable assignments, but 17 of those 30 assignments were corrected by the superintendent (T pp. 33-35). The Association maintained that there were fourteen (14) inequities over which C-3 was filed.

7. The Association argued that since the Board voluntarily negotiated over line duty assignments in Art. 16 Sec. A(4), and that since it did not indicate that negotiations over line duty assignments were illegal that, therefore, the Board should not be entitled to negate the parties' collective agreement.

Analysis

The Association filed for arbitration seeking an interpretation of Art. 16 Sec. A(4). The Association argued that said clause requires line duty assignments to be made on an "equitable" basis, and it maintained that the Board failed to make such "equitable" assignments.

Having considered all of the instant facts, I am not convinced that there is sufficient factual bases herein to deviate from the well established legal principle that assignments are managerial prerogatives which are neither negotiable nor arbitrable. As I held in the interim relief decision regarding this matter, Mainland Reg. H.S. Bd.Ed, supra, the Courts of this State, and the Commission, have held that the assignment of personnel is a managerial prerogative. Supra note 1. In fact, the Commission has

specifically held that the assignment of teachers to lunch or cafeteria duty is a managerial prerogative. In re Plainfield Bd.Ed., P.E.R.C. No. 80-42, 5 NJPER 418 (1979); In re Spotswood Bd.Ed., P.E.R.C. No. 81-109, 7 NJPER 159 (1981); In re Perth Amboy Bd.Ed., supra; In re Byram Twp. Bd.Ed., 152 N.J.Super. 12, 24-25 (App. Div. 1977).

A finding that the assignment to line duties is not arbitrable is particularly important in this case where the evidence shows that if the Board were required to rotate the line duties it could adversely affect the Board's ability to provide the necessary classroom instruction for students.

The test to determine the negotiability (or arbitrability) of a given subject was established by the State Supreme Court in Local 195, IFPTE v. State, 88 N.J. 393, 8 NJPER 285 (¶13129 1982). That test provided that a subject is negotiable 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. 88 N.J. at 404-405.

When considering the Local 195 test, as well as the balancing test established by the Supreme Court in Bd.Ed. Woodstown-

Pilesgrove v. Woodstown-Pilesgrove Ed.Assn., 81 N.J. 582, 589 (1980), it becomes clear that the assignment to line duties is a managerial prerogative. The third part of the Local 195 test is activated. Negotiations--or arbitration--over the assignment to line duties would significantly interfere with the Board's determination of governmental policy, i.e., the number and type of classes to provide for students. Thus, the instant grievance cannot be arbitrated.

In support of its position in opposition to the instant Scope Petition the Association argued that Article 16 Sec. A(4) required equitable assignment to line duties, and it suggested that the Board acted improperly--or perhaps illegally--by negotiating over and agreeing to that clause knowing that it would subsequently argue that the clause was non-arbitrable. Neither of those issues can be considered in this proceeding. A scope of negotiations proceeding is limited to determining whether the subject matter of a particular dispute is within the scope of negotiations. It was not intended to resolve issues of arbitrability, i.e., contract interpretation, nor was it intended to determine whether the actions of the employer were inappropriate or in violation of the Act.

The Commission established that principle in In re Hillside Bd.Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975):

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.

That holding was cited with approval by the Supreme Court in Ridgefield Park Ed. Assn. v. Ridgefield Park Bd.Ed., 78 N.J. 144, 154 (1978). Consequently, the Association's suggestion that the Board acted improperly or illegally with regard to Article 16, Sec. A(4) was not considered herein. That issue could have been raised in an unfair practice proceeding.

As a result of the above findings and analysis the answers to the questions posed by the Association in its request for a full hearing (C-5) are as follows:

1. The issue of equity of assignments of line duties cannot be separated from the right of the Board to make the assignments because if it were, it could adversely affect the ability of the Board to provide necessary classes for students.
2. The assignment of line duty is not done entirely on a random basis. The High School Principal does select certain teachers for specific assignments based upon their particular strengths and weaknesses. But that fact does not alter the instant conclusion.
3. Every certified teacher is qualified for any line duty assignment. But that does not mean that the Board can be required to rotate the assignments.

4. The attributes of individual teachers that are matched with specific assignments is within the Board's managerial discretion.

5. The line duty assignments do have a different level of difficulty.^{5/}

6. The resolution of the 1981 grievance regarding line duty assignments does not establish that the 1983 grievance, or any other grievance over assignment, can be resolved through arbitration without interfering with managerial prerogatives. The 1981 grievance was resolved internally at the superintendent' level, it did not proceed to arbitration. Although the 1983 grievance, and indeed any future grievance, could similarly be resolved at the superintendent's level without significant harm to managerial prerogatives, that is not the issue in this proceeding. The issue here is whether arbitration over line duty assignments would harm or interfere with the Board's exercise of its managerial prerogative, and I have concluded that it would. The 1981 grievance resolution does not alter that conclusion.

7. Whether the Board had knowledge of the non-negotiability and non-arbitrability of line duty assignments when it negotiated J-1 is not relevant to this proceeding.

^{5/} Although the assignment to line duties is non-negotiable, the Association has the right to seek in future negotiations a greater stipend for those line duties which are considered more difficult. For example, the Board can determine who will perform cafeteria duty, but the Association could attempt to negotiate an additional stipend for cafeteria duty since it is considered to be the most difficult line duty assignment.

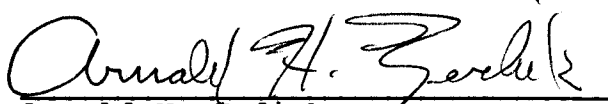
Accordingly, based upon the entire record, the law, and the above analysis, I make the following:

Recommendation

I recommend that the Commission find:

1) that the assignment of teachers to line duties is neither negotiable nor arbitrable, and

2) that the arbitration proceeding intended to review the grievance filed on September 28, 1983 relative to line duty assignments be permanently restrained.


Arnold H. Zudick
Hearing Examiner

Dated: July 26, 1985
Trenton, New Jersey