

I.R. NO. 92-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IRVINGTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-27

IRVINGTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In 1990, the Board abolished the position of High School Guidance Chairperson. The Association claimed that a Guidance Counselor assumed all the duties of that position and sought compensation for that position through arbitration. The Commission Designee declined to restrain the arbitration finding the level of compensation arbitrable.

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Appearances:

For the Petitioner
Schwartz, Pisano, Simon & Edelstein, attorneys
(Leonard C. Schiro, of counsel)

For the Respondent
Michael Mulkeen, NJEA Field Representative

INTERLOCUTORY DECISION

On August 26, 1991, the Irvington Board of Education ("Board") filed a scope of negotiations petition with the Public Employment Relations Commission ("Commission") seeking to restrain an arbitration scheduled between it and the Irvington Education Association ("Association"). It claims that the subject matter of the arbitration is not arbitrable and sought an interim restraint of the arbitration pending a final Commission decision. The Association opposes the application and claims that the matter scheduled for arbitration is negotiable and arbitrable.

An interim relief hearing was conducted on September 19, 1991. At that time, I denied the Board's application for restraint. This is a memorialization of that decision.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{1/}

In June 1990, the Board abolished the position of High School Guidance Chairperson. It alleges that this action was in strict compliance with N.J.S.A. 18A:28-9. In December 1990, the Association filed a grievance with the Board. The grievance alleged that an Association member, Louise Donnelly, has assumed the position of High School Guidance Chairperson without receiving the commensurate compensation provided for in the collective negotiation agreement between the Board and the Association.

The Board claims that any workload increase of Donnelly stems from the Board's statutory right to abolish the High School Guidance Chairperson position and cites Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den., 81 N.J. 292 (1979). The

^{1/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

Board argues that the issue of compensation for increased workload, in light of its decision to abolish the position, is non-arbitrable as per Fair Lawn Board of Education, P.E.R.C. No. 87-135, 13 NJPER 356 (¶18146 1987).

The Board also makes a factual argument stating that the duties of the High School Guidance Chairperson are being performed by the High School Administrative Team and that Ms. Donnelly's responsibilities have not increased.

The boundaries of the Commission's scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court stated:

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. [Id. at 154]

Accordingly, I declined to make a factual determination as to Donnelly's actual duties.

Since Maywood, the Supreme Court has articulated the test to determine whether a subject is a mandatorily negotiable term and condition of employment or a non-negotiable managerial prerogative. Local 195, IFPTE v. State, 88 N.J. 393 (1982)

[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 403-404]

In Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987), the Commission stated:

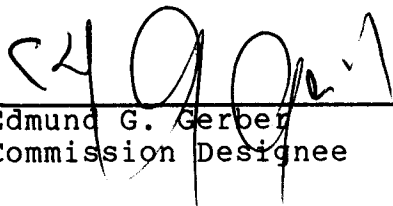
Applying (Local 195), we have followed Maywood and found that in some cases there are no severable compensation issues while in others there are severable compensation issues after a non-negotiable decision is implemented.

In Fair Lawn, the employer abolished an administrative position. The Association brought two grievances to arbitration and the employer sought to restrain them both. The Commission held an arbitration seeking compensation for the increased workload for the remaining administrative staff was not arbitrable. The second arbitration concerned compensation for administrative duties performed by non-administrative personnel. The Commission did not restrain this arbitration. It stated the issue "was akin to instances where an employee seeks compensation for the performance of duties of a higher pay classification or rank".

Here, the Association is seeking additional compensation for the performance of duties of a higher classification - department chairperson.

See also, Deptford Bd. of Ed. and Deptford Ed. Ass'n, P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80-T1 (5/24/82) where the Commission found an employer committed an unfair practice when the employer eliminated a position but assigned the duties of that position to a per-diem employee and failed to pay the employee the compensation provided for under the contract.

Accordingly, I believe the Commission will find Donnelly's compensation is arbitrable and the Board's application for an interim restraint is denied. This is an interim decision only, subject to a final Commission decision.



Edmund G. Gerber
Commission Designee

DATED: October 2, 1991
Trenton, New Jersey