P.E.R.C. NO. 88-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MADISON BOROUGH BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-88-29

MADISON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Madison Education Association against the Madison Borough Board of Education. The grievance protested a reduction in the workload and salary of a foreign language teacher. The Commission finds that the dispute pertains to the mandatorily negotiable issue of compensation and hours of work.

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Appearances:

For the Petitioner, Rand, Algeier, Tosti, Woodruff & Frieze, Esqs. (David B. Rand, of counsel; Ellen S. Bass and Ronald T. Hyman, on the briefs)

For the Respondent, Bucceri & Pincus, Esqs. (Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On November 6, 1987, the Madison Borough Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain binding arbitration of a grievance filed by the Madison Education Association ("Association"). The grievance protests a reduction in the workload and salary of a foreign language teacher.

The parties have filed briefs and documents. These facts appear.

The Association is the majority representative of the Board's certificated personnel, including teachers. The parties have a collective negotiations agreement effective from July 1, 1986

to June 30, 1989 with a grievance procedure ending in binding arbitration.

Ada Borelli teaches Italian. Before the 1987-88 school year, she taught five periods and had one duty period and one preparation period. The Board determined in the spring of 1987 that it was "unnecessary to maintain the teacher's schedule in the Italian curriculum at the 1986-87 level...." The Board assigned Borelli four classes in Italian, one duty period and one preparation period for 1987-88.[1/] The Board reduced Borelli's compensation from 100% to 86% of her full salary.[2/]

The parties' affidavits cite examples of other teachers who have taught four classes but have been assigned other non-teaching duties in lieu of a fifth class. These teachers have received their full salaries. The Board cites other instances where teacher workload and salary have been more severely reduced without protest from the Association.

The Association claims that even though student population has decreased by 38% since 1978, many classroom teachers have had only four periods of teaching yet received a full salary. An

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1/ The superintendent's affidavit states that the reduction in Borelli's classes resulted from declining district enrollments. The Association president's affidavit lists recent enrollment in Italian as 67 students grouped in five classes for 1985-1986, 78 students in five classes for 1986-1987 and 65 students in four classes for 1987-1988.

2/ Neither party has stated the length of Borelli's workday or whether it differs from the workday of those teachers paid full salaries.

Association affidavit lists examples in the foreign language department, the industrial arts department and the math department in the 1987-88 school year plus the social studies department and the industrial arts department in the 1986-87 school year. Additionally, the Association alleges that where classroom teachers had only four periods of instruction, they were given two "duty periods" and their salary levels were maintained at 100%.[3/]

The Board contends that in each instance there have been educational reasons behind the reduced teaching load and the teacher has performed other necessary non-teaching duties.[4/] The Board contends it has no additional non-teaching duties for Borelli.[5/]

On May 28, 1987, the Association initiated a grievance on Borelli's behalf. The grievance alleged that the Board violated the agreement by reducing Borelli's salary and demanded that her salary be maintained at 100% for the 1987-88 school year. The grievance was denied. The Association demanded arbitration limited to the

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3/ Duty periods are used for supervision of cafeteria, hallways, study halls, in-school suspension and other similar activities.

4/ For example, a math teacher is also the computer coordinator and carries a reduced load to oversee the computer inventory and to consult with other teachers.

5/ The Superintendent's affidavit states that certain English teachers have a one-half hour "as assigned" period each day. It appears that these teachers are on-call to be emergency substitutes, assist other teachers and do other occasional assignments the Superintendent deems necessary. In the absence of any assignment the period is used as preparation time. Thus these teachers have no specific non-teaching duties during these periods.

issue of whether Borelli was contractually entitled to 100% salary and benefits. This petition ensued.

The Board contends that it has made a "reduction in force" under N.J.S.A. 18A:28-9, and that the Association seeks to arbitrate the "impact of this RIF." The Board states that the only arbitrable issue would be a contention that the salary for the reduced position was improperly set.

The Association argues that the dispute is negotiable and arbitrable as it involves a fundamental term of a teacher's employment, i.e., a unilateral reduction in compensation.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), 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. [78 N.J. at 154]

Thus, we do not determine the contractual merits of the Association's claims or the Board's defenses. We consider only whether this dispute involves a mandatorily negotiable subject.

In Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Supreme Court articulated 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]

Applying the first Local 195 test, we hold this dispute to be arbitrable. Having her salary reduced from 100% to 86% intimately and directly affected Borelli's work and welfare. The Board concedes that whether Borelli's salary in her reduced position is correct is an arbitrable issue.

Applying the second test, we disagree that N.J.S.A. 18A:28-9 preempts arbitration. An employer's characterization of a reduction in hours as a non-negotiable partial RIF was addressed in Piscataway Tp. Bd. of Ed. v. Piscaaway Tp. Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978):

> The Board here argues that economy motivated the action complained of and that there is no material difference between the Board's right to

> cut staff and the right to cut months of service of staff personnel where the economy motive is common to both exercises. We disagree. While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without prior negotiations, there cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year (subject to normal vacations), and without prior negotiation with the employees affected, is in violation of both the text and spirit of the [Act]. [Id. at 101; citations omitted]

See also Hackettstown Bd. of Ed., P.E.R.C. No. 80-179, 6 NJPER 263 (¶11124 1980), aff'd App. Div. Dkt. No. 385-80T3 (1/18/82), certif. den. 89 N.J. 429 (1982).

Finally, permitting the grievance to proceed to arbitration would not significantly interfere with the Board's determination of educational policy. While the grievance protests the reduction in workload, it maintains that even at the reduced level Borelli should be paid a full salary. Accordingly, the grievance predominantly involves whether Borelli is receiving the appropriate compensation. Numerous court decisions have held that both work hours and compensation are a mandatorily negotiable terms and conditions of employment. See Local 195; Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 8 (1978); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973). In Galloway, the Court held that a reduction in the daily hours of secretaries from seven to four was mandatorily negotiable.

In South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), the Board reduced a teacher's salary from 5/8 to 4/8 of full salary after it removed a duty assignment from the teacher's schedule. We found the change to be mandatorily negotiable, but that the Association waived its right to negotiate.[6/] See also, Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER ___ (¶_____ 1988); Pennsauken Tp., P.E.R.C. No. 88-41, 13 NJPER 821 (¶18316 1987); Cherry Hill Bd. of Ed., P.E.R.C. No. 85-68, 10 NJPER 44 (¶16024 1984); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); East Brunswick Bd. of Ed., P.E.R.C. No. 82-111, 8 NJPER 320 (¶13145 1982); cf. CWA and State of N.J., P.E.R.C. No. 85-77, 11 NJPER 74, 78 n.10 (¶16036 1985), aff'd App. Div. Dkt. Nos. A-2920-84T7 and A-3124-84T7 (4/7/86). Here, the merits of the dispute are for the arbitrator to determine. The grievance is arbitrable.

ORDER

The request of the Madison Borough Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
May 25, 1988
ISSUED: May 26, 1988

6/ In unfair practice cases, unlike scope cases, we can consider contractual defenses.