

P.E.R.C. NO. 83-135

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF  
THE BOROUGH OF SOUTH RIVER,

Petitioner,

-and-

Docket No. SN-83-63

SOUTH RIVER EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that the South River Board of Education had a non-arbitrable managerial prerogative to close an elementary school, transfer three elementary school teachers and the sixth grade students to a middle school, adopt a department-oriented approach to teaching middle school students, and conform the workday of the former elementary school teachers in accordance with the negotiated workday for all secondary school teachers. The Commission therefore restrains binding arbitration of the Association's grievances to the extent they claim that any change in the grievants' scheduled workday violated the parties' agreement. The Board's request for a permanent restraint of binding arbitration, however, is denied to the extent the grievances claim that the superintendent failed to meet with the grievants and explain the reasons for their transfers and to the extent the grievances seek compensation for the extra time the grievants allegedly spent packing their materials and orienting themselves to the operations of the middle school.

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Appearances:

For the Petitioner, Wilentz, Goldman & Spitzer, P.C.  
(Gordon J. Golum, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.  
(Arnold S. Cohen, of Counsel)

DECISION AND ORDER

On January 17, 1983, the Board of Education of the Borough of South River ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board sought a permanent restraint of binding arbitration of three grievances which the South River Education Association ("Association") and three employees had filed. The three grievances alleged that the Board violated the parties' collective negotiations agreement when it transferred each of the grievants involuntarily from an elementary school to a secondary school. The grievances sought compensation for damages, expenses, time worked to complete the transfers, and any other relief which was just and equitable.

The Board also sought a temporary restraint of arbitration pending the Commission's final determination of this matter. The parties filed briefs and reply briefs and argued orally before Commission designee Alan R. Howe on February 23, 1983. At the end of the argument, he temporarily restrained arbitration.

Pursuant to a reorganization plan, the Board closed the Lincoln Elementary School and expanded classes in the Middle School to include sixth grade as well as seventh and eighth grade. In the Lincoln Elementary School, teachers essentially taught the same students all day; in the Middle School, teachers teach certain subjects according to their department. When the sixth grade classes were placed in the Middle School, the instruction of these classes was departmentalized. As part of this reorganization, the Board transferred three Lincoln Elementary School sixth grade teachers to the Middle School. These teachers receive the same salary in the Middle School they would have received had they remained in Lincoln Park Elementary School. Their workday now conforms to the workday of all other teachers in the Middle School and as a consequence, it has been lengthened by approximately one half-hour.<sup>1/</sup>

On September 7, 1982, the Association and the three teachers filed grievances alleging that their transfers violated

<sup>1/</sup> Article VII of the parties' collective negotiations agreement provides that the in-school workday for elementary teachers shall not exceed seven hours while the regular in-school workday for secondary teachers shall not exceed seven hours and 30 minutes.

certain clauses in the collective negotiations agreement including a clause protecting teachers' rights, a clause requiring the superintendent or his/her designee to meet with a teacher and notify the teacher of the reasons for any involuntary transfer before the transfer, a clause concerning negotiations procedure, and an anti-discrimination clause. Each grievance asked that the Board "...compensate the grievant for damages, expenses, time worked to complete the transfer, and...any other relief which is just and equitable."

The Board denied the three grievances and the Association then sought binding arbitration. The instant petition ensued.

The Board argues that it has a non-arbitrable managerial prerogative to transfer its employees which necessarily subsumes all the incidental effects of these transfers. It primarily relies upon Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) ("Ridgefield Park"); Plainfield Ass'n of School Administrators v. Bd. of Ed. of City of Plainfield, 187 N.J. Super. 11 (App. Div. 1982) ("Plainfield"); In re Essex County College, P.E.R.C. No. 83-78, 9 NJPER 49 (¶14024 1982).

The Association does not dispute the Board's managerial prerogative to transfer the three employees and does not seek to rescind the transfers. It contends, however, that four limited issues associated with the transfers are arbitrable: (1) the superintendent's alleged failure to meet with the grievants before their transfers and explain the reasons for the transfers, (2) compensation for an alleged increase in working hours since

the grievants' workday now starts earlier, ends later, and has a shorter lunch period; (3) compensation for an alleged increase in the amount of preparation time as a result of the grievants' need to orient themselves to the operations of the Middle School; and (4) compensation which certain teachers allegedly did not receive, but other teachers did, for packing their materials before moving. The Association primarily relies upon Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); In re Old Bridge Township Bd. of Ed., P.E.R.C. No. 83-60, 9 NJPER 12 (¶14004 1982), appeal pending, App. Div. Docket No. A-1863-82-T2 ("Old Bridge"); and In re Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Docket No. A-2060-78 (Feb. 26, 1980).

In analyzing scope of negotiations disputes, we have repeatedly held that we cannot be bound by the labels contesting parties place on the dispute. Since the parties may attempt to frame the dispute in terms most favorable to the result they desire, it is necessary to review the contract, the grievance, the demand for arbitration, and the factual context of the dispute to ascertain the real issues. In re Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979); In re West Paterson Bd. of Ed., P.E.R.C. No. 80-17, 5 NJPER 419 (¶10220 1979).

We also emphasize the limits of our jurisdiction. As we stated in In re Hillside Bd. of 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.

See also, Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

It is uncontested that the Board had a non-arbitrable managerial prerogative to transfer the three grievants to the Middle School and that these transfers cannot be rescinded. Ridgefield Park. Under all the circumstances of this case, we are persuaded that this managerial prerogative entailed the right to make the grievants' workday -- specifically the starting time, lunchtime, and ending time -- coincide with the already negotiated workday for all other teachers in the Middle School. Here, the Board decided, pursuant to its managerial prerogative to make major educational policy decisions, to close an elementary school, transfer its sixth grade students and staff to the Middle School, adopt a department-oriented approach to teaching the Middle School students, and conform the workday of the grievants in accordance with the negotiated workday for all secondary school teachers, including those employed at the Middle School.<sup>2/</sup>

<sup>2/</sup> While the Association alleges a violation of the contractual workday clauses, it has not sought to have the prior workday structure for elementary teachers instituted for teachers of sixth grade classes in the Middle School.

Under the unique circumstances of this case, we find that the Association's claim for compensation for the alteration in the grievants' workday cannot be severed from the Board's managerial prerogative to close the elementary school, transfer the sixth grade classes and teachers, adopt a department-oriented approach to teaching the Middle School students, and conform the workday of the grievants in accordance with the negotiated workday for all secondary school teachers. Accordingly, we restrain arbitration over the Association's claim that the change in the grievants' workday violated its contract.

We believe that the remaining aspects of the grievances are arbitrable because they intimately and directly affect the grievants and have little or no effect on the Board's ability to make transfers. The claim that the superintendent failed to meet with the grievants and explain the reasons for the planned transfers is purely procedural in nature and does not limit the Board's ability to make transfers or establish the substantive criteria for transfers. Such claims have repeatedly been held negotiable and arbitrable. In re Local 195, IFPTE, AFL-CIO v. State, 88 N.J. 393 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); East Brunswick Bd. of Ed. and East Brunswick Ed. Ass'n, P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981); aff'd in part, rev'd in part, App. Div. Docket No. A-4488-80T2 (5/3/82); In re Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). See also Old Bridge. The grievants'

claims for additional compensation stemming from the extra time -- over and above the normal workday or teaching and preparation time required of secondary teachers -- they allegedly spent packing materials and orienting themselves to the Middle School are also arbitrable. These claims essentially involve an alleged increase in the workload and worktime normally expected of Middle School teachers; it would not be illegal for an employer to agree to compensate teachers (as the Board did in at least some instances) for such an increase in workload and worktime.<sup>3/</sup> In re East Newark Bd. of Ed., P.E.R.C. No. 82-123, 8 NJPER 373 (¶13171 1982); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 83-54, 8 NJPER 26 (¶13011 1981); In re Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982); In re Spotswood Bd. of Ed., P.E.R.C. No. 81-109, 7 NJPER 159 (¶12070 1981). Accordingly, we decline to restrain arbitration over these claims.

ORDER

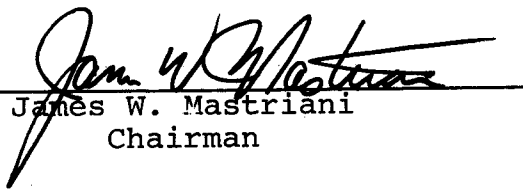
The Board's request for a permanent restraint of arbitration is granted to the extent the grievances claim that any change in the grievants' scheduled workday violated the parties' agreement. The Board's request for a permanent restraint of arbitration is denied to the extent the grievances claim that the superintendent failed to meet with the grievants and explain

<sup>3/</sup> The Board has asserted that it paid all teachers for packing and unpacking their materials and that it complied with the contractual notice and meeting requirements. Pursuant to Ridgefield Park, we do not address the merits of these factual assertions.



the reasons for their transfers and to the extent the grievances seek compensation for the extra time the grievants allegedly spent packing their materials and orienting themselves to the operations of the Middle School.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch, Suskin and Graves voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioner Graves dissented from that portion of the decision finding a change in scheduled workday to be non-negotiable.

DATED: Trenton, New Jersey  
April 19, 1983  
ISSUED: April 20, 1983