P.E.R.C. NO. 87-135

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIR LAWN BOARD OF EDUCATION

Respondent,

-and- Docket No. SN-87-10

FAIR LAWN ADMINISTRATORS,
AND SUPERVISORS ASSOCIATION

Petitioner,

SYNOPSIS

The Public Employment Relations Commission restrains arbitration of a grievance filed by the Fair Lawn Administrators and Supervisors Association against the Fair Lawn Board of Education. The grievance alleges the Board violated the parties' contract when it unilaterally increased the workload of these employees without appropriate compensation. The Commission finds that the grievance is outside the scope of mandatory negotiations because the alleged workload increase stemmed from the Board's decision to abolish a vice-principal position pursuant to 18A:28-9 and is not materially distinguishable from that in Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd App. Div. Dkt. No. A-4429-85T6 (3/25/87).

The Commission declines to restrain binding arbitration of a second grievance which alleged that the Board violated the parties' contract by giving a department chairperson duties equivalent to that of a district subject supervisor without appropriate compensation. The Commission finds that the claim for compensation is severable from the non-negotiable decision to reorganize the departments and assign increased responsibilities.

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Appearances:
For the Petitioner, Green and Dzwilewski, Esqs.
(Allan P. Dzwilewski, of counsel)

For the Respondent, Bennett, Davison & Munoz, Esqs.
(Raymond A. Hayser, of counsel)

DECISION AND ORDER

On September 15, 1986, the Fair Lawn Board of Education ("Board") filed a petition for Scope of Negotiations Determination. The Board seeks to restrain arbitration of two grievances filed by the Fair Lawn Administrators and Supervisors Association ("Association"). The grievances allege that the Board violated the parties' collective negotiations agreement when it (1) unilaterally increased the workload of three employees without appropriate compensation; and (2) gave a department chairperson duties equivalent to that of a district subject supervisor without appropriate compensation.1/

1/ On September 16, 1986, a Commission designee restrained the arbitrator from issuing a decision pending this decision. Fair Lawn Bd. of Ed., I.R. No. 87-10, 12 NJPER 824 (¶17315 1986).

Both parties have filed briefs and documents. The following facts appear.

During the summer of 1985 the Board abolished a vice principal position at Fair Lawn High School and distributed the duties of that position among five other administrators. On November 15, 1985, three administrators, Frederick Crouter, Patricia Harrington and Peter Natale, grieved the resulting increase in workload without compensation. That grievance was denied.

In September 1984, the high school principal consolidated the home economics, industrial arts and business education departments into a single department known as the career education department. The consolidation had been planned several years before, but took place in September 1984 after the home economics head teacher took another position in the district.2/

Department chairperson Frank Devens, previously the head of the business education department, was assigned to supervise the new department. Devens' title was changed to career education department chairperson. The industrial arts head teacher remained in his position and was assigned to assist Devens.

2/ Small departments at Fair Lawn High School are supervised by "head teachers", who are supervised by an administrator. Large departments are supervised by "department chairpersons" or "district supervisors."

On November 15, 1985, Devens filed a grievance alleging that the reorganization made his duties equivalent to those of a district subject supervisor and requested the higher compensation due that position. On December 16, 1985, the Board denied that grievance.

On January 17, 1986, the Association demanded binding arbitration of both grievances. This petition ensued.

Relying on In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 792 (1979), and Madison Borough Bd. of Ed., P.E.R.C. No. 80-116, 6 NJPER 185 (¶11088 1980), the Board asserts that neither grievance is arbitrable. It asserts that any workload increases in either case are the direct result of its non-negotiable decisions to reduce its work force and consolidate departments.

The Association argues that both grievances are distinguishable from Maywood and concern severable changes in workload. It asserts that compensation for increased workload is negotiable and therefore arbitrable, citing Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. No. A-3380-80T2 (1982) and Bridgewater-Raritan Regional Bd. of Ed., P.E.R.C. No. 81-35, 6 NJPER 449 (¶11230 1980).

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 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. [Id. at 154.]

Thus, we do not consider the merits of the Association's grievances or any of the Board's potential defenses.

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, 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.]

These tests apply to questions concerning school employees. Old Bridge Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985); Wright v. Bd. of Ed. of City of East Orange, 99 N.J. 112 (1985); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Education Ass'n, 81 N.J. 582, 592 (1980).

The first grievance may not be submitted to binding arbitration. The alleged workload increase stemmed from the Board's decision to abolish a vice-principal position pursuant to N.J.S.A. 18A:28-9 and is not materially distinguishable from that in Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd App. Div. Dkt. No. A-4429-85T6 (3/25/87). See also Maywood.

The second grievance alleges the Board increased Devens' workload to that of a district subject supervisor, without compensating him for the increased responsibilities.

The Board asserts that such compensation is not negotiable because it is directly related to the high school principal's decision not to replace the home economics head teacher. However, the Board submitted evidence that the resulting reorganization had been planned for several years. Thus, the home economics head teacher's transfer was the catalyst but not the predominant reason for the reorganization. It is also undisputed that Devens' workload was significantly increased when he was given responsibility for two additional departments.[3/]

3/ The High School principal's response to the grievance states that the scope of Devens duties increased and the superintendent's response at the next step characterizes the thrust of the grievance as involving compensation. Because we do not reach the merits of the grievance, we do not determine whether Devens' responsibilities are equal to that of a district subject supervisor.

The claim for compensation is severable from the non-negotiable decision to reorganize the departments and assign Devens the increased responsibilities. See Ramapo-Indian Hills Ed. Ass'n, Inc. v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), aff'd 176 N.J. Super. 35 (App. Div. 1980) (compensation for new position combining hours and workload of two prior positions is negotiable and arbitrable); Deptford Bd. of Ed. and Deptford Ed. Ass'n, P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1981), aff'd App. Div. Dkt. No. A-1818-80-T8 (5/24/82) (Board violated contract and Act by paying substitute rates to teacher permanently performing duties of classroom teacher). It is also akin to instances where an employee seeks compensation for the performance of the duties of a higher pay classification or rank. See Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1980), aff'd App. Div. No. A-1617-79; Tp. Of Edison, P.E.R.C. No. 86-9, 11 NJPER 455 (¶16160, 1985). We decline to restrain binding arbitration of the second grievance.

ORDER

The Board's request for a permanent restraint of binding arbitration of the grievance filed on behalf of Frederick Crouter, Patricia Harrington and Peter Natale is granted.

The Board's request for a permanent restraint of binding arbitration of the grievance filed on behalf of Frank Devens is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
April 22, 1987
ISSUED: April 23, 1987