

P.E.R.C. NO. 86-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KINGWOOD TOWNSHIP  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-88

KINGWOOD TOWNSHIP  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance which the Kingwood Township Education Association has filed. The grievance alleges that the Board violated its collective negotiations agreement when it unilaterally reduced the number of preparation periods of some teachers, rather than hire a substitute, so that these teachers could cover music classes. The grievance, read together with the demand for arbitration, requests compensation or release time for the lost preparation time. A recent decision of the Appellate Division on a similar grievance governs.

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Appearances:

For the Petitioner, Gaetano M. De Sapia, Esq.

For the Respondent, New Jersey Education Association  
(John A. Thornton, Jr., UniServ Field Representative)

DECISION AND ORDER

On April 15, 1985, the Kingwood Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a restraint of binding arbitration of a grievance which the Kingwood Township Education Association ("Association") has filed. The grievance alleges that the Board violated its collective negotiations agreement when it unilaterally reduced the number of preparation periods of some teachers, rather than hire a substitute, so that these teachers could cover music classes. The grievance, read together with the demand for arbitration, requests compensation or release time for the lost preparation time.

The parties have submitted briefs, affidavits and exhibits. In addition, on April 26, 1985, Commission designee Arnold H. Zudick conducted a hearing on the Board's request for an interim restraint of binding arbitration; the Hearing Examiner granted that restraint because he was not sure the grievance raised the mandatorily negotiable issues of compensation for a workload increase. The following facts appear.

The Association is the majority representative of the Board's certified teachers. The Board and the Association have entered a collective negotiations agreement with a grievance procedure ending in binding arbitration. Article XIV C provides: "Every effort will be made to utilize any music, art, library, and physical education specialist to allow preparation time for teachers." Article XVII B provides: "It shall be the responsibility of the administration to arrange for a substitute." Another article provides that existing terms and conditions of employment shall continue in effect during the term of the agreement.

At the beginning of the 1983-84 school year, the Board had not employed a music teacher. On September 6, 1983, the Board hired Debbie Sargeant for that position. Sargeant could not immediately work full-time for the Board because she had to give 30 days' notice to another school district; she did, however, teach for the Board on some days in September. The Board decided not to hire a substitute music teacher for the days in September Sargeant did not work; the Board asserts that a substitute teacher would have "babysat" since Sargeant did not yet have a program for music classes on Tuesdays. The Board also asserts that the teachers losing preparation time

because of the Tuesday music class had other scheduled preparation time during the school day.

On October 18, 1983, the Association filed a grievance alleging that the loss of preparation time violated the cited contractual provisions. The grievance specifically asserted that teachers had their pupil contact time unilaterally increased and their preparation time unilaterally diminished because of the Board's failure to hire a substitute teacher. The grievance asked for a remedy of release time for adversely affected teachers.

The Board denied this grievance. The Association then demanded binding arbitration. The demand for arbitration lists "loss of preparation time" as the nature of the dispute and "proper compensation" as the remedy sought. This petition ensued.

The Board contends that the dispute predominantly involves its managerial prerogative to decide whether or not to hire substitute teachers. It relies, in part, on Edison Twp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983) ("Edison") and Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979) ("Elizabeth"). It also asserts that the Association does not have a meritorious contractual claim, and it submits an arbitration award denying a preparation time dispute.<sup>1/</sup>

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<sup>1/</sup> The Board has also requested oral argument. We deny that request. We have reviewed the transcript of the argument before our designee.

The Association contends that the dispute predominantly involves the mandatorily negotiable issues of a decrease in preparation time, increase in pupil contact time and request for additional compensation in light of those changes. It relies on Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976) ("Red Bank") and Bd. of Ed. of City of Newark v. Newark Teachers Union, P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80) ("Newark"). It further asserts that there is a past practice of either paying teachers or giving them release time if they lose preparation time<sup>2/</sup> and that it has withdrawn any allegation related to the agreement's provisions concerning substitute teachers.

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.  
Id at 154.

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<sup>2/</sup> The Board denies that such a past practice exists.

Thus, we do not consider the merits of the Association's grievance or the Board's defenses and we specifically do not consider the previous arbitration award in the Board's favor.<sup>3/</sup>

We agree with the Board that it has a managerial prerogative to decide whether or not to hire a specialist in the first place and to decide whether or not to hire a substitute to cover the specialist's classes prior to the time the specialist commences teaching full-time. Edison and Elizabeth so hold.<sup>4/</sup>

We also agree with the Association that reductions in preparation time, causing a corresponding increase in pupil contact time, and requests for additional compensation given such reductions present mandatorily negotiable and arbitrable issues. Red Bank and Newark so hold. In addition, we recently decided a similar case involving the same parties Kingwood Twp. Bd. of Ed., P.E.R.C. No. 85-94, 11 NJPER 219 (¶16084 1985). There, a grievance claimed that

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<sup>3/</sup> That award would presumably be admissible in other arbitration proceedings involving the same or related issues.

<sup>4/</sup> The Board has also submitted an unpublished decision of the Appellate Division, Superior Court involving the same parties. Kingwood Ed. Ass'n v. Kingwood Bd. of Ed., App. Div. A-898-77 (1/6/78). There, the Court vacated an arbitration award in favor of the Association. The Association had grieved the elimination of a math specialist position and an ensuing reduction in preparation time for other teachers. The Court found that the Association's grievance was not contractually meritorious and added that the Board had a managerial prerogative to eliminate the math specialist position.

a unilateral and uncompensated reduction in preparation time for special area teachers violated the parties' contract. We held that this grievance could be submitted to binding arbitration and cited a long list of supporting cases, Id at 220-21, a list which we incorporate here. Also, the Appellate Division has just confirmed an arbitration award ordering this Board to pay teachers compensation for two preparation periods teachers lost when ordered to supervise classes normally covered by substitutes. Kingwood Twp. Bd. of Ed. v. Kingwood Twp. Ed. Ass'n, App. Div. Dkt. No. A-1414-84T7 (Nov. 25, 1985).

This case involves both the Board's managerial prerogative to hire substitute teachers and the Association's right to negotiate and arbitrate over reductions in preparation time, increases in workload, and questions of compensation. Our designee found, based on the grievance's wording, that the dispute did not raise the mandatorily negotiable issue of compensation for a workload increase. We believe, however, that the grievance, especially when read together with the demand for arbitration, presents such issues and that these issues are severable from the Board's managerial prerogative and may be submitted to binding arbitration. City of Elizabeth v. Elizabeth Fire Officers Assn, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985).

The grievance does assert that the reduction in preparation time and increase in pupil contact time stemmed from the Board's failure to hire a substitute teacher. The failure to hire a

substitute teacher is not an arbitrable issue and the arbitrator is not empowered to secondguess that decision.

To the extent, however, that the grievance, as expressly limited by the demand for arbitration, seeks compensation for lost preparation time, this dispute is arbitrable. Kingwood, App. Div. Dkt. No. A-1414-84T7 (Nov. 25, 1985) is right on point. That a teacher may have to cover another teachers' class in the absence of a substitute does not mean that the teacher must do so for free and at the cost of a preparation period. A school board may agree, and an arbitrator may find that it has agreed, that a teacher sacrificing a preparation period to cover another class should receive additional compensation or release time for that sacrifice. Such an agreement would be severable from the school board's decision not to hire a substitute. The Association alleges that the Board has made such agreement through the clause preserving past practices, allegedly including compensation or release time for lost preparation periods; the Board denies that it has. This contractual dispute is for the arbitrator to resolve.<sup>5/</sup>

We reject the Board's reliance on Elizabeth as precluding arbitration. In Elizabeth, the grievance alleged that the school

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<sup>5/</sup> At the argument before our designee, the Board argued that the increase in pupil contact time and reduction in preparation periods were too trivial to be submitted to binding arbitration. We disagree for the reasons set forth in Kingwood. Id at 221. The Appellate Division rejected this argument in the recent Kingwood decision already discussed.



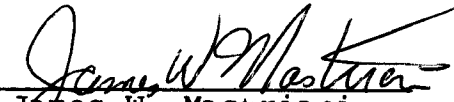
board had violated a contractual clause requiring it to hire substitute teachers; the remedy requested was the board be ordered to hire a substitute. Although the majority representative later modified the request for relief in its demand for arbitration, the issue framed in the demand remained the same: did the Board violate the contractual provision requiring it to hire a substitute? We concluded that the grievance predominantly involved the board's failure to hire substitutes and was not couched in terms of an alleged workload increase. Here, by contrast, the grievance alleges that the Board violated a clause concerning preparation time and preserving past practices; the remedy requested, consistent with an alleged past practice, was release time or proper compensation; and the issue framed in the demand does not challenge the decision not to hire a substitute. Further, the Association has withdrawn any allegation related to the subsection of the agreement entitled Substitutes. Under all these circumstances, we believe that the instant demand for arbitration, unlike Elizabeth, raises a mandatorily negotiable and arbitrable issue which may be severed from the Board's non-arbitrable decision not to hire a substitute. See also North Hunterdon Bd. of Ed., P.E.R.C. No. 86-55, \_\_\_ NJPER \_\_\_ (¶ \_\_\_\_\_ 1985).

#### ORDER

The Board's request for a restraint of binding arbitration is granted to the extent that the grievance challenges the Board's decision not to hire a substitute music teacher.

The Board's request for a restraint of binding arbitration is denied to the extent that the grievance alleges that teachers lost preparation time and should be compensated or receive release time for that loss.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
December 12, 1985  
ISSUED: December 13, 1985