

P.E.R.C. NO. 95-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLEN RIDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-79

GLEN RIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

Applying the balancing test articulated in Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980), to the particular circumstances of this case, the Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Glen Ridge Education Association against the Glen Ridge Board of Education to the extent the grievances seek an adjustment of the teaching assignments of special education teachers. The assignments indisputably flowed from the elimination of the special education curriculum in all major subjects except science. Permitting contractual limitations to apply to this situation would significantly interfere with the Board's ability to implement its education policy decision.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys
(Cherie L. Maxwell, of counsel)

For the Respondent, Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On March 7, 1994, the Glen Ridge Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of two grievances filed by the Glen Ridge Education Association. The grievances assert that the employer violated the parties' collective negotiations agreement when, during the 1993-1994 school year, it assigned two special education teachers to teach a number of subjects and subject fields exceeding contractual limits.

The parties have filed a certification, exhibits, and briefs. These facts appear.

The Association represents the Board's professional staff, including special education teachers. The parties entered into a

collective negotiations agreement effective from July 1, 1992 to July 30, 1994. Article 16 is entitled Working Conditions. Section 16.8 provides:

Teachers should not be required to teach in more than two (2) major subjects and prepare lessons for more than three (3) different subject fields except:

- A. Grades Pre-K - 6.
- B. The Board may assign four (4) different subject fields to no more than nine (9) teachers in grades 9-12 and four (4) teachers in grades 7-8 for no more than a total of thirteen (13) teachers. Those teachers assigned a fourth preparation shall receive a fifteen (15) minute reduction of non-teaching duty.

Sections 2.11 and 2.12 define "major subject" and "subject field(s)":

2.11 The term "major subject(s)" shall mean major academic disciplines: English, foreign language, reading, mathematics, science, social studies, physical education/health, and related acts.

2.12 The term "subject field(s)" shall mean a course division or track within a major subject: Spanish 1; Freshman English Track 1; History II, Track 2; etc.

The contractual grievance procedure ends in binding arbitration.

Special education teachers must be certified to teach handicapped children and may teach only in the subject and field of special education. They must gear their teaching to each student's Individualized Educational Program ("IEP"). That IEP describes the extent to which a student can participate in mainstream courses or must be taught in self-contained special education classes replacing a mainstream course.

Before the 1992-1993 school year, the Board had three special education teachers. But during the 1992-1993 and 1993-1994 school years, it employed only two special education teachers: Shelley Epstein and Beverly Belknap.^{1/} They were assigned to teach the subject of special education in the Resource Center Program. In that program, a special education teacher may be required to provide either instruction replacing a regular class program or instruction supporting a mainstream class taught by a regular classroom teacher; but a special education teacher may not be required to provide both types of instruction during the same instructional period. Each class has between three and seven students; the students range from ninth through twelfth grades.

During the 1993-1994 school year, Epstein was assigned these classes:

1. Resource Center ("R.C.") English - 2 classes
2. R.C. History
3. R.C. Study Skills (or R.C. Support)
4. In-class Chemistry Support
5. R.C. Support^{2/}

The R.C. English and History courses were replacement courses requiring Epstein to plan and teach lessons and grade students. The other courses were planned and taught by mainstream subject teachers and Epstein's role was limited to supporting the students by such duties as helping them stay on task or take notes and having testing

^{1/} Belknap has since resigned.

^{2/} Epstein received a contractual stipend for teaching a sixth period.

procedures modified for them. The year before Epstein had been assigned three replacement classes and two support classes.

During the 1993-1994 school year, Belknap was assigned these classes:

1. R.C. English
2. R.C. Math - 2 classes
3. R.C. Study Skills (or R.C. Support)
4. In-class Physical Science Support
5. R.C. Support

The R.C. English and Math courses were replacement courses requiring Belknap to plan and teach lessons and grade students. The other courses were planned and taught by mainstream subject teachers and Belknap provided the same type of support as Epstein did. The year before Belknap had been assigned three replacement classes and three support classes.^{3/}

Before the 1993-1994 school year, the Board had a special education curriculum for each major subject except science. The special education teacher followed one special education-adapted curriculum for all grade levels. When the Board eliminated the special education curriculum in 1993-1994, the special education teacher had to follow the regular education curriculum for each grade level. According to the Association's brief, the curriculum changes resulted in increasing Epstein's subject fields from one to four within both major subject areas of English and History and necessitated Epstein's having to sacrifice her lunch period and work

^{3/} Belknap received a contractual stipend for teaching a sixth period in both the 1992-1993 and 1993-1994 school years.

outside the allotted preparation time and normal work day.^{4/}

On September 14, 1993, the Association filed two grievances. The grievances asserted that the employer violated Article 16.8 when it required Epstein to teach three major subjects and eight subject fields and when it required Belknap to teach four major subjects and eight subject fields. The remedy sought in each grievance was "[a]djustment of teaching assignment to conform with the Master Agreement."

The Director of Special Services denied the grievances. He concluded that the assignments complied with Article 16.8. The Superintendent denied an appeal. She concluded that the assignments were contractually permissible and asserted that the Resource Center classes were not subject area courses requiring subject area certification and that in several classes Epstein and Belknap only had to support the students rather than plan the classes. The Board denied the grievances as well.

The Association demanded arbitration. It identified the dispute to be arbitrated as: "Violation of Collective Bargaining Agreement in the teaching assignments given to Special Education Teachers at Glen Ridge High School." This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue:
is the subject matter in dispute within the scope

^{4/} The Association has not presented similar information or allegations concerning Belknap.

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.

Thus, we do not consider the contractual arbitrability or merits of these grievances. We specifically do not consider the Board's contention that it acted within the contract's workload confines.

Article 16.8 is a mandatorily negotiable provision setting teacher workload limits. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26 (App. Div. 1977); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd NJPER Supp.2d 160 (¶141 App. Div. 1986). Nevertheless, applying the balancing test articulated in Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980), to the particular circumstances of this case, we must restrain arbitration over the demand that the teaching assignments of special education teachers be readjusted. The assignments indisputably flowed from an educational policy decision: eliminating the special education curriculum in all major subjects except science. Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980). Special education classes that span more than one grade are now governed by more than one curriculum.

We recognize that this may change how a special education teacher teaches or assists a particular class of multi-grade special education students. But the change is limited. Neither the number of teaching periods nor the number of separate classes in separate subjects or subject fields has been increased.^{5/} Permitting the contractual limitations to apply to this situation would significantly interfere with the Board's ability to implement its educational policy decision.

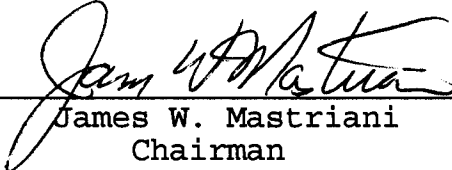
The Association asserts that even if the assignments are within the employer's prerogative, it may seek to negotiate over severable issues such as loss of preparation periods or duty-free time and extra compensation for increased workload. The Board does not dispute the negotiability of such claims if properly raised, but asserts that they were not raised in the earlier steps of the grievance procedure. That is a contractual arbitrability defense which we do not have jurisdiction to entertain. Ridgefield Park.

^{5/} We reject the Association's suggestion that restraining arbitration in this situation would necessarily permit a board to assign a regular teacher four classes in four different subject areas without limit.

ORDER

The request of the Glen Ridge Board of Education for a restraint of binding arbitration is granted to the extent the grievances seek an adjustment of the teaching assignments of special education teachers.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn and Klagholz voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioners Ricci and Wenzler were not present.

DATED: April 10, 1995
Trenton, New Jersey
ISSUED: April 11, 1995