

P.E.R.C. NO. 92-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MEDFORD LAKES BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-91-85

MEDFORD LAKES EDUCATION
ASSOCIATION,

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Medford Lakes Education Association against the Medford Lakes Board of Education. The grievance alleged that the Board violated the parties' collective negotiations agreement when it assigned teacher assistants instead of teachers to supervise students in the lunchroom and on the playground. The Commission finds that the Board has a prerogative to determine how assignments of lunchroom supervision will be apportioned between two distinct classifications of unit employees who have always done that work.

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Docket No. SN-91-85

MEDFORD LAKES EDUCATION
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Cassetta, Taylor & Whalen, consultants
(Bruce Taylor, on the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Richard A. Friedman, of counsel)

DECISION AND ORDER

On May 16, 1991, the Medford Lakes Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Medford Lakes Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it assigned teacher assistants instead of teachers to supervise students in the lunchroom and on the playground.

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

The parties entered into a collective negotiations agreement effective from July 1, 1989 to June 30, 1992. Section A of the recognition clause provides:

For the purposes of this Agreement, regularly assigned employees who fill the following positions are included in the collective bargaining unit:

1. Grade level classroom teachers
2. Subject matter teachers
3. Special field teachers
4. Nurses and librarians
5. Child psychologist
6. Guidance counselor
7. Custodial personnel
8. Secretaries
9. Assistants
10. Maintenance employees

The grievance procedure ends in final and binding arbitration.

Before the 1990-91 school year, teachers, full-time teacher assistants, and part-time lunchroom/playground assistants supervised students in the lunchroom and on the playground. For example, during the 1989-1990 school year and the first five months of the 1990-1991 school year, teachers at the Neeta School performed three hours of such duty a day and so did assistants.^{1/}

On February 4, 1991, a new supervision schedule for the Neeta School was issued. This schedule reduced the teachers' supervision hours from three to two hours a day and increased the assistants' supervision hours from three to four hours a day. This change was made for economic reasons.

On March 6, 1991, the Association filed a grievance asserting that the new schedule arbitrarily denied teachers lunchroom duty and violated these contract articles:

^{1/} The contract specifies an hourly rate of \$16.25 for teachers for cafeteria or playground duty during the 1990-1991 school year. The contract also specifies salaries for full-time assistants and hourly rates for part-time assistants.

Article 4.C.

No employee covered by this Agreement shall be...reduced in rank or compensation without just cause....

Article 8.A.3.

If there is insufficient coverage for lunchroom and playground supervision through the use of volunteers, the Board shall have the right to assign teachers, on a rotating basis, to lunchroom and playground supervision for one-half an hour per occasion. The rotation list shall continue from year to year with the addition of new staff placed at the end of the list. Said teachers so assigned shall receive one-half (1/2) the hourly rate of compensation for this assignment.

The grievance seeks restoration of the previous schedules, the end of the practice of replacing contracted personnel with lesser paid assistants or volunteers, and payment of all lost wages. The Board denied this grievance, asserting that it had complied with the contract and that staffing decisions are not negotiable. The Association demanded binding arbitration. This petition ensued.

The Board argues that it has a managerial prerogative to shift the lunchroom supervision duties between groups of employees within the negotiations unit and to determine the number of employees in a job classification assigned to a task. The Association responds that the reassigning of work from teachers to assistants is mandatorily negotiable.

At the outset of our analysis, we stress the limits of our jurisdiction. 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 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 decide the contractual merits of the grievance or any defenses the employer may have.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a subject is mandatorily negotiable and legally arbitrable if:

(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]

The Board has not contended that a statute or regulation preempts negotiations.^{2/}

This case does not involve a shift of work from employees within a negotiations unit to employees outside the negotiations

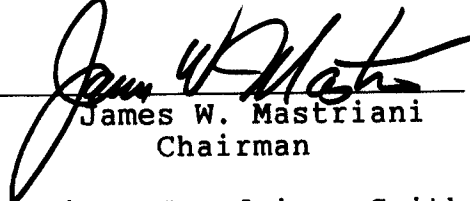
^{2/} N.J.A.C. 6:11-4.6(a) requires that school aides assisting in the supervision of pupil activities work under the direction of a principal, teacher, or other designated certified professional personnel. This regulation does not preempt the teachers' claim that they rather than the assistants should supervise the lunchroom.

unit,^{3/} an assignment unrelated to normal job duties, the procedure for allocating lunchroom duties among teachers, a reduction in teachers' duty-free time, or a change in work hours or compensation rates -- all of which would have presented mandatorily negotiable issues. Instead the limited issue in this case is whether the Board has a prerogative to determine how assignments of lunchroom supervision will be apportioned between two distinct classifications of unit employees who have always done that work -- teachers and assistants. We hold that this assignment issue is not mandatorily negotiable and accordingly restrain arbitration. See, e.g., Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (¶19123 1988); Jersey City Bd. of Ed., P.E.R.C. No. 87-14, 12 NJPER 686 (¶17260 1986); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984); Perth Amboy Bd. of Ed., P.E.R.C. No. 83-36, 8 NJPER 573 (¶13264 1982).

ORDER

The request of the Medford Lakes Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: October 17, 1991
Trenton, New Jersey
ISSUED: October 18, 1991

^{3/} We reject the Association's contention that an arbitrator must decide whether unit work has been shifted outside the unit. There is no dispute that the negotiations unit encompasses both teachers and assistants.