

P.E.R.C. NO. 82-109

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket Nos. SN-82-40  
SN-82-44

NORTH BERGEN FEDERATION OF  
TEACHERS,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Public Employment Relations Commission restrains binding arbitration of two grievances which the North Bergen Federation of Teachers asserts against the North Bergen Board of Education. The grievances predominantly concern the Board's non-arbitrable managerial prerogatives to determine the number of moderators (class advisors) and teacher aides it will hire.

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Appearances:

For the Petitioner, Frank R. Gioia, Esq.

For the Respondent, Sauer, Boyle, Dwyer & Canellis  
(Christopher M. Howard, of Counsel)

DECISION AND ORDER

The North Bergen Board of Education ("Board") filed two Petitions for Scope of Negotiations Determination with the Public Employment Relations Commission on January 6, 1982 (SN-82-40) and January 8, 1982 (SN-82-44). The Board seeks to restrain arbitration of grievances which the North Bergen Federation of Teachers ("Federation") seeks to submit to binding arbitration pursuant to the parties' collective agreement. We have consolidated the two petitions.<sup>1/</sup>

Both parties filed briefs and accompanying documents by March 29, 1982. An analysis of each grievance follows.

<sup>1/</sup> The Board filed a third petition on a related matter (SN-82-41). We have not consolidated this petition with the other two petitions because we desire additional information on that grievance.

SN-82-40

This grievance arose from the Board's decision not to hire two moderators (class advisors) per class. On November 2, 1981, the Federation filed a Request for Submission of a Panel of Arbitrators with the Commission. The Request stated:

Only one moderator per class-year was hired for the 1981-82 school year. According to past practice (and as listed in the teacher contract), there should be two moderators per class.

In the remarks section of the Request, the Federation commented:

We feel this is especially unfair to those moderators who have already given years of service to a particular class, but who have not been rehired.

The Federation argues that Schedule B of the collective agreement between the parties, as well as past practice, provided for two moderators in the class. The Board contends that the gravamen of the dispute involves the Board's non-arbitrable managerial prerogative to decide not to fill a position.

The law in this area is well settled. In In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), the Commission held that the determination of the number of employees was a management prerogative. This holding has received support in many subsequent Commission and judicial decisions.<sup>2/</sup> For

<sup>2/</sup> See, In re Borough of Roselle Park, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re East Orange Bd. of Ed., P.E.R.C. No. 79-62, 5 NJPER 122 (¶10071 1979), aff'd App. Div. Docket No. A-3336-78 (4/28/80); In re Wayne Bd. of Ed., P.E.R.C. No. 80-83, 6 NJPER (¶11015 1980). The determination to fill vacant positions is also a managerial prerogative. See, State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); In re State of New Jersey (State Troopers), P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979); and In re City of Paterson, P.E.R.C. No. 80-99, 6 NJPER 91 (¶11046 1980).

example, in In re Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 81-46, 6 NJPER 496 (¶11253 1980) ("Ramapo"), the Commission held that the employer's decision not to hire an assistant fencing coach was neither negotiable nor arbitrable, and that rewording the grievance to assert workload changes did not change the gravamen of the dispute.

In a more recent case, In re Kingwood Twp. Bd. of Ed., P.E.R.C. No. 82-31, 7 NJPER 584 (¶12262 1981) ("Kingwood"), the Commission concluded that the decision not to replace one cafeteria aide was a managerial determination. The Commission once again stated that an employer had an inherent managerial prerogative to fix the number of employees required to perform a particular task. In both Kingwood and Ramapo, the Commission, in reliance upon In re Maywood Board of Education, 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1980) ("Maywood"), held that any workload increases flowing from the employer's decisions were non-negotiable.

The gravamen of the dispute clearly concerns the Board's determination not to fill the second moderator position. Under Ramapo and Kingwood, this determination is non-arbitrable. The Federation's argument that the instant matter can be distinguished from Ramapo because in this matter a contractual provision provided for two moderators is without merit. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) holds that contractual clauses on illegal subjects of negotiations may not be enforced.

Consequently, the Board's decision on how many moderators to use is non-arbitrable, and workload increases as a result of the Board's actions are neither negotiable nor arbitrable pursuant to Maywood. We grant the Board's request for a permanent restraint of arbitration with respect to SN-82-40.

SN-82-44

This grievance arose from the Board's decision not to hire or rehire teacher aides for the 1981-82 academic year. On November 2, 1981, the Federation filed a Request for Submission of A Panel of Arbitrators with the Commission. The Request stated:

According to the teacher contract, as well as past practice, 24 teacher aides are to be hired for the school system.

The Federation argues that Paragraph 14 (page 17) of the collective agreement provides for the hiring of such aides. The clause in question states:

Non-professional assistance will continue to be provided to teaching staff members in accordance with prior practices.

The Board contends that the gravamen of the instant dispute, as in SN-82-40, involves its non-arbitrable managerial prerogative to hire employees.

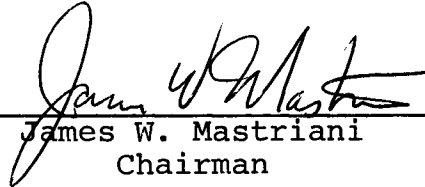
The Federation's reliance upon the contract is once again misplaced. The issue raised by this grievance involves the hiring or number of employees the Board should employ and falls squarely within the Ramapo and Kingwood decisions. Consequently, the Board's decision not to hire teacher aides is a non-arbitrable

managerial prerogative. We therefore grant the Board's request for a permanent restraint of arbitration in SN-82-44.

ORDER

For the foregoing reasons, the North Bergen Federation of Teachers is permanently restrained from submitting the grievances in SN-82-40 and SN-82-44 to arbitration.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch and Suskin voted for this decision. Commissioners Hipp and Graves abstained. None opposed. Commissioner Newbaker was not present.

DATED: May 4, 1982  
Trenton, New Jersey  
ISSUED: May 5, 1982