

P.E.R.C. NO. 82-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KINGWOOD TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-1

KINGWOOD TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission, based on prior decisions, concludes that matters pertaining to the number of employees to be employed, or not to be employed, are management prerogatives and are beyond the scope of negotiations and arbitration.

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Appearances:

For the Petitioner, Aron, Till & Salsberg, Esqs.
(Rodney T. Hara, of Counsel)

For the Respondent, John A. Thornton, Jr.
New Jersey Education Association

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on July 1, 1981, by the Kingwood Township Board of Education (the "Board"). The Petition alleges that a dispute existed concerning the negotiability of a grievance which the Kingwood Education Association (the "Association") sought to submit to binding arbitration pursuant to the collectively negotiated agreement between the Board and the Association.

The grievance in question arose from the Board's decision not to hire a replacement for one of two cafeteria aides who resigned.^{1/} Prior to this resignation, the cafeteria was staffed by one teaching staff member and two cafeteria aides.

^{1/} The cafeteria aides are not part of the collective negotiations unit.

Following the resignation of the aide, the Board reevaluated its staffing requirements and decided not to hire another cafeteria aide.

On March 9, 1981, the Association filed a grievance over the reduction of the number of cafeteria aides. The grievance states in part:

Further, the Association contends that the matter involves a Board decision affecting the teachers' terms and conditions of employment and is an increase in teacher work load.

And seeks as remedy:

1. That the Board hire another cafeteria aide and a substitute aide be provided in the interim.
2. That compensation be provided for all teachers who served duty without two cafeteria aides.^{2/}

In the demand for arbitration dated May 13, 1981, the Association altered its statement of the dispute to contest only the "[i]ncreased workload/cafeteria" and seeks a remedy of "[e]quivalent release time, appropriate compensation or diminution of assignments." The parties agreed to hold the arbitration proceeding pending a decision on this Petition. The Board filed a brief in this matter on July 15, 1981. The Association filed a letter brief on September 3, 1981.

^{2/} These quotations from the grievance are taken from the Board's brief. The Association did not dispute this recitation of the grievance in its response to the Board's brief.

To the extent that this dispute questions the negotiability or arbitrability of the Board's decision to unilaterally reduce the number of cafeteria aides, there is little doubt that the decision is not a mandatory subject of negotiations and could not be submitted to binding arbitration, particularly since the aides are not within the Association unit.^{3/} The Commission in

In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), ruled that the number of employees to be employed, or not to be employed, was a management prerogative. This rationale has received support in many subsequent Commission and judicial decisions and is now firmly entrenched as a part of our public sector labor relations law. In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979); In re Borough of Roselle Park, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re East Orange Board of Education, 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 Board of Education, P.E.R.C. No. 80-83, 6 NJPER (¶11015 1980). Matters such as how many employees are required to perform a particular task are inherent management prerogatives and are non-negotiable and, therefore, non-arbitrable. Woodstown-Pilesgrove Reg. School Dist. Bd of Ed v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1981).

^{3/} In its submission to the Commission the Association concedes that an arbitrator could not order the Board to hire an additional aide and specifically relinquishes its claim for that remedy.

While the Association did initially contest the Board's decision not to fill the aide's position, it now appears to only seek additional compensation, release time or diminution of assignments to mitigate the alleged effect on the teachers' workload from the loss of the aide. The Board maintains that this aspect of the instant dispute is non-negotiable and cites as support In re Maywood Bd of Ed, supra, and In re Weehawken Bd of Ed, P.E.R.C. No. 80-91, 6 NJPER 50 (¶11026 1979). Both cases held that work load increases which flow directly from a board of education's decision to reduce its staff are non-negotiable.

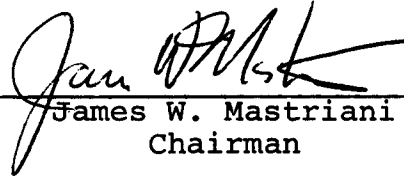
Where an action by a public employer concerns both non-negotiable matters of educational policy and negotiable terms and conditions of employment, it is the Commission's task in assessing the negotiability and arbitrability of a grievance to balance the competing interests and determine the dominant issue in the dispute. See, Woodstown-Pilesgrove, supra. In the instant case, the grievance does not allege an increase in hours or student contact time. The only allegation of increased workload stems from the fact that a teacher on cafeteria duty is now only assisted by one aide instead of two. In Maywood the Court specifically rejected as non-negotiable a similar allegation of an increase in the workload of the remaining librarians and teachers due to the reduction in force in the number of school librarians. There, as here, the effect was to increase the supervisory responsibilities and workload of the remaining personnel to offset the loss of the librarian who was terminated. The Court held that the dominant issue was the decision to terminate that position

and therefore no negotiation obligation arose. In the instant case the same conclusion must be reached. Accordingly we believe the grievance relates to a non-negotiable action by the Board and is accordingly non-arbitrable.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Kingwood Township Education Association is restrained from submitting the instant dispute to arbitration.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: October 2, 1981
Trenton, New Jersey
ISSUED: October 5, 1981