P.E.R.C. NO. 2003-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WANAQUE BOROUGH BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2003-24

WANAQUE BOROUGH EDUCATION ASSOCIATION,

Respondent.

DECISION

The Public Employment Relations Commission denies the request of the Wanaque Borough Board of Education for a restraint of binding arbitration of a grievance filed by the Wanaque Borough Education Association. The grievance asserts that special area teachers have not been remunerated for additional class assignments. The Commission concludes that the Board's decision to have special area teachers teach more sections at the same time is an educational policy decision. However, compensation for additional assignments is mandatorily negotiable. Whether there is any entitlement to additional compensation is for the arbitrator.

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, Schwartz, Simon, Edelstein, Celso & Kessler, LLP, attorneys (Andrew B. Brown, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Nancy I. Oxfeld, on the brief)

DECISION

On October 18, 2002, the Wanaque Borough Board of Education petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Wanaque Borough Education Association. The grievance asserts that special area teachers have not been remunerated for additional class assignments.

The parties have filed briefs and exhibits. The Board has submitted the certification of superintendent Alan Skriloff. The Association has submitted the certification of Pat Harrison, NJEA field representative, former Wanaque teacher, and former Association president. These facts appear.

The Association represents all full and part-time teachers and certain other staff. The parties' collective negotiations agreement is effective from July 1, 2000 through June 30, 2003. The grievance procedure ends in binding arbitration.

Article V, Substitute Teachers, provides that when a substitute cannot be obtained, the superintendent or his designee may assign the class to another teacher. Such teachers shall receive $70.00 additional remuneration. If the class is assigned to more than one teacher, the amount is divided among the teachers involved.

The district has K-8 schools. Students attend special classes such as art, music, media center, and physical education by homeroom or section. Special areas are not taught by regular classroom teachers. Regular classroom teachers have preparation periods while students are in special area classes.

Before the 2001-2002 school year, one section had a special class at a time. Harrison's certification states that the past practice was also that if a special area teacher had to cover more than one section per period, he or she would be compensated the substitute's pay for the additional class coverage.

Beginning in the 2001-2002 school year, smaller sections were created due to increased enrollment. Also, grades six, seven and eight began moving from class to class and did not stay in one room all day.

These changes caused the Board to review the way it scheduled physical education and music. It decided to assign more than one section to physical education and music class at the same time.

Some special area teachers now teach more than one section at a time. A section is from 14 to 20 students. The newly combined classes range in size from 24 to 32 students.

On October 11, 2001, the Association filed a grievance on behalf of four special area teachers. The grievance states the action challenged as: "multi homerooms in special area classes; no remuneration for additional services provided." The grievance seeks remuneration for special area teachers or separation of classes to one teacher/one homeroom ratio. The grievance was denied at all levels with the Board claiming a managerial prerogative to organize the master schedule.

According to the Association, for the 2002-2003 school year, the schedule change has affected the two physical education teachers who historically taught two sections at the same time, but are now required to cover three sections at a time. The Association asserts that this action was taken so the Board could free up one period for a physical education teacher to cover lunch duty. Harrison states that while the number of students taught per day is the same, workload has increased because the lunch duty has been added to the work performed by the assigned teachers.

On July 19, 2002, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (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 argues that class size is not mandatorily negotiable and that disputes pertaining to class size are not legally arbitrable. It also argues that the contract clause allegedly breached does not apply to these factual circumstances.

The Association responds that this is not an issue of increased class size, but one of increased workload and compensation for increased class coverage.

The Board replies that there is no increase in workload and that the number of teaching periods for physical education teachers actually decreased. It contends that workload increases are measured by changes in the length of the work day, the number of teaching periods, and the amount of pupil contact time, not the number of students in a class.

As we recently stated in Franklin Tp. Bd. of Ed., P.E.R.C. No. 2003-58, 29 NJPER ___(¶_____ 2003):

> A school board has a managerial prerogative to fix class size. See, e.g., Cumberland Cty. College, P.E.R.C. No. 83-95, 9 NJPER 90 (¶14048 1983). How many students are in a class impacts on teacher workload, but is predominately an issue of educational policy. Class size limits are not mandatorily negotiable nor enforceable through binding arbitration. Wanaque.

The Board's decision to have special area teachers teach more sections at the same time is an educational policy decision

that cannot be challenged in binding arbitration. The Association acknowledges that right.

Franklin also decided a related compensation issue and addressed the case law addressing grievances seeking compensation for increased workload.

> In Wanaque [Bd. of Ed., P.E.R.C. No. 80-152, 6 NJPER 323 (¶11160 1980)], the union sought compensation as a remedy for violation of an unenforceable class size limit. Arbitration was restrained because a union cannot seek to enforce a clause barring an employer from exercising a prerogative simply by limiting its request for relief to something, like compensation, that might not unduly interfere with the exercise of the prerogative. See Fairview Borough, P.E.R.C. No.2002-27, 28 NJPER 47 (¶33014 2001), recon. den. P.E.R.C. No. 2002-50, 28 NJPER 172 (¶33062 2002). Here, unlike Wanaque, the Association is not seeking to reply on an unenforceable clause. Wanaque recognized that a contractual provision providing for additional compensation if class size exceeded some number would be a legally arbitrable workload/compensation clause. Id. at 325 n.7. We believe that this aspect of Wanaque encompasses the claim . . . that the Board violated a contractual provision calling for compensation for teachers covering classes on an emergency basis. We take no position on whether that provision applies or has been violated; we simply hold that this claim is mandatorily negotiable and legally arbitrable. [29 NJPER at __]

Here, as in Franklin, having to pay additional compensation under these circumstances would not significantly interfere with the Board's policy decision to assign additional sections to special area teachers. Whether there is any entitlement to

additional compensation is for the arbitrator. We express no opinion on the merits of the Association's claim.

ORDER

The request of the Wanaque Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners, Buchanan, DiNardo, Mastriani and Ricci voted in favor of this decision. None opposed. Commissioners Katz and Sandman were not present.

DATED: March 27, 2003
Trenton, New Jersey
ISSUED: March 28, 2003