

P.E.R.C. NO. 2005-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MILLVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-059

MILLVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the Millville Board of Education's request for a restraint of binding arbitration of a grievance filed by the Millville Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it increased the workload and instructional periods of teachers assigned to the Academy Success and Pride Program (ASAP) without providing additional compensation. The request is granted to the extent, if any, the grievance challenges the Board's right to assign teachers to ASAP duties or to determine which teachers will be assigned such duties. The restraint is denied to the extent the grievance seeks additional compensation for the assignment of these duties.

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, Capehart & Scatchard, attorneys
(Michael E. Heston, on the brief)

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, on the brief)

DECISION

On April 5, 2004, the Millville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Millville Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it increased the workload and instructional periods of teachers assigned to the Academy Success and Pride Program (ASAP) without providing additional compensation.

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

The Association represents all teachers and support staff. The parties' current collective negotiations agreement is effective from July 1, 2000 through June 30, 2003. The grievance procedure ends in binding arbitration.

Lakeside Middle School operates on a nine-period day. Each period is 40 minutes long. Six periods are classroom periods, one is an activities period, and two periods are reserved for team planning and personal planning. During the activities period, supplemental instruction and basic skills groups have always taken place. The two planning periods plus a duty-free lunch period of 30 minutes give each teacher 130 minutes each day of non-pupil contact time.

During the 2002-2003 school year, a pilot program began in which programs and activities were developed for sixth and seventh grade students during the activities period. Teacher-administrator teams developed these programs and activities to motivate and enrich students. Some of the teams developed remediation programs for math and language arts literacy. These programs became the basis for ASAP. An analysis of test scores revealed that students in these programs had higher test scores than students in study halls and homework clubs. The ASAP program set clear parameters on the use of this period so that students were receiving strategies based on the data analysis

that was provided to each team. The Association claims, and the Board does not dispute, that both planning and grading are now involved during the ASAP period. The ASAP continued into the 2003-2004 school year.

On September 27, 2002, the Association filed a level II grievance. The grievance stated:

At the start of this school year the staff at Lakeside were asked for their cooperation in a new pilot program, now referred to as ASAP. The teachers were informed that this pilot program, which took the place of the previous "Activities Period," was not an additional instructional period. However, as the ASAP program has progressed it seems to have evolved into something other than what was originally inferred.

Since the beginning of the school year members of the Lakeside staff have been informally observed by members of the administrative team during this newly assigned responsibility. Teachers have been provided instructional materials for their classes and have been instructed to use them. Also the principal's letter to the Basic Skills staff (dated September 23) specifically denotes that if Basic Skills teachers are to be out absent they must have an "emergency plan for the ASAP period."

The Association can only assume that this new ASAP period is, in fact, an additional "instructional period," thus an increase in the workload for the Lakeside staff without benefit of a negotiated compensation.

By way of remedy, the grievance sought the suspension of the newly formed ASAP until an arbitration award or compensation could be established.

On March 24, 2003, the Association moved the grievance to the Board level. It repeated the contents of the grievance.

On April 14, 2003, the Board denied the grievance. Its response stated:

The Millville Board of Education is keenly aware of the Academy Success and Pride Program (ASAP). We were given a comprehensive overview of the program at a recent board meeting by the staff of the Lakeside Middle School. We are hard pressed to understand why the MEA is so intent on eliminating a program developed by teachers for the purpose of improving student performance and one that is designed to help solve social issues confronting today's students.

As we understand, the program does not violate the contractual day of seven hours and five minutes. ASAP does not replace a preparation period or instructional period. If the program were eliminated would you have teachers do nothing? Lakeside teachers currently have more preparation time than any other school.

The Board is very reluctant to have a program abandoned after only one year in operation and one that was designed by teachers.

Your grievance is denied.

On April 21, 2003, 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, 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.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

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]

No preemption argument is made so we will focus on balancing the employer and employee interests.

The Board argues that the establishment of a formalized structure for one-on-one remedial instruction during an activities period is an educational policy goal of the district not subject to binding arbitration. The Board argues it has a managerial prerogative to require employees to perform additional duties during the regular work day, where such duties are in the nature of their job responsibilities, do not extend the work day, and do not deny contractually guaranteed preparation or off-duty time.

The Association argues that the ASAP has evolved into an instructional period and that compensation for additional responsibilities and distribution of the assignments are mandatorily negotiable. The Association asserts that while the teachers involved in the ASAP were previously assigned to the activities period, they were not previously required to prepare lesson plans or grade the students involved.

The Association does not appear to challenge the Board's educational policy decision to require teachers to perform ASAP duties. We will restrain arbitration to the extent, if any, the grievance seeks to challenge that decision. Fair Lawn Bd. of Ed., P.E.R.C. No. 83-48, 8 NJPER 609 (¶13289 1982) (substitution of one education-related task for another without loss in preparation or duty-free time could not be challenged through binding arbitration).

We also restrain arbitration to the extent, if any, the grievance challenges the distribution of assignments. The Board's interest in deciding which teachers are best qualified to perform instructional duties outweighs any employee interest in choosing which duties a teacher will perform. Ridgefield Park.

The teachers have an interest in seeking extra compensation for duties that now involve grading and lesson plans. The employer has an interest in having teachers perform these new duties without additional compensation. Each of these interests can be addressed through the negotiations process. If the parties' agreed to additional compensation under these circumstances, enforcement of such an agreement would not significantly interfere with the educational policy decision to offer the program to students. Penns Grove-Carneys Point Reg. Bd. of Ed., P.E.R.C. No. 2003-93, 29 NJPER 287 (1987 2003). Accordingly, we decline to restrain binding arbitration of the compensation claim.

ORDER

The request of the Millville Board of Education for a restraint of binding arbitration is granted to the extent, if any, the grievance challenges the Board's right to assign teachers to ASAP duties or to determine which teachers will be assigned such duties. The restraint is denied to the extent the

grievance seeks additional compensation for the assignment of these duties.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: August 12, 2004
Trenton, New Jersey
ISSUED: August 13, 2004