P.E.R.C. NO. 2006-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOONTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-72

BOONTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Boonton Board of Education for a restraint of binding arbitration of a grievance filed by the Boonton Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it reduced the work hours and compensation of eight teaching assistant positions from full-time to part-time and eliminated their fringe benefits. The Commission concludes that the number of hours an employee works and fringe benefits are mandatorily negotiable terms and conditions of employment.

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, Lindabury, McCormick & Estabrook attorneys, (Anthony P. Sciarillo, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Freidman, attorneys (Richard A. Friedman and Joshua I. Savitz, on the brief)

DECISION

On March 22, 2006, the Boonton Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Boonton Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it reduced the work hours and compensation of eight teaching assistant positions from full-time to part-time and eliminated their fringe benefits.[1/]

1/ On August 8, 2005, the Association filed an unfair practice charge (Dkt. No. CO-2006-40) alleging that the reduction violated N.J.S.A. 34:13A-5.4(a)(1), (3) and (5). That charge is being held in abeyance pending resolution of this (continued...)

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

The Association represents a broad-based unit of the Board's employees including teaching assistants. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration. Article IV.C states:

> Except as this agreement shall otherwise provide all existing benefits of employment applicable on the effective date of this Agreement to employees covered by this Agreement shall continue to so apply during the term of the agreement.

Effective June 30, 2005, the Board reduced the number of full-time teaching assistant positions and increased the number of part-time positions. According to the Association, the number of full-time positions was reduced from 13 to 5 and the number of part-time positions was increased from 4 to 20. According to the Board, the number of full-time positions was reduced from 16 to 6 and the number of part-time positions was increased from 7 to 24.[2/] Several employees who had worked full-time during the 2004-2005 school year declined part-time employment.

1/ (...continued) petition.

2/ We need not resolve this factual dispute as it is undisputed that several positions were reduced to part-time.

On July 11, 2005, the Association filed a grievance asserting that the Board had violated Article IV.C by changing the teaching assistants' employment conditions without negotiations. The Association sought reinstatement of the full-time positions with benefits and other appropriate relief. The grievance was denied at all levels of the negotiated procedure. On September 16, 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 merits of the grievance or any contractual defenses the employer might 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 statute or regulation is asserted to preempt negotiations.

The Board asserts that it had a managerial prerogative to determine the size of its workforce and had the discretion to adjust the teaching assistants' work hours because the parties' contract does not specify their work hours. The Association responds that because the amount of work available for teaching assistants remained unchanged, the same tasks are being performed, and all positions are held by unit members; the Board had an obligation to negotiate before reducing the hours, compensation, and benefits of full-time teaching assistants who now hold part-time positions.

There is a difference between deciding how many employees are needed to deliver a public employer's services and the terms and conditions of employment of employees holding such jobs. This dispute involves the latter issue. That issue is, on balance, mandatorily negotiable.

The number of hours an employee works and the employee's compensation and fringe benefits are all mandatorily negotiable terms and conditions of employment. If a public employer seeks to change those working conditions, it must do so through negotiations with the majority representative. See N.J.S.A. 34:13A-5.3; Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secs., 78 N.J. 1 (1978) (reducing full-time secretarial positions to part-time violated employer's obligation to negotiate with majority representative); see also Piscataway Tp. Bd. of Ed. and Piscataway Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978) (reducing principal's work year and compensation from 12 to 10 months violated duty to negotiate); City of Newark, P.E.R.C. No. 94-118, 20 NJPER 276 (¶25140 1994) (employer did not have managerial prerogative to reduce recreation leaders' work hours from 40 to 20 per week, thereby reducing their salaries and eliminating their health benefits); Bayshore Reg. Sewerage Auth., P.E.R.C. No. 88-104, 14 NJPER 332 (¶19124 1988) (reduction of laboratory technician's weekly work hours from 40 to 20 was legally arbitrable).

The Board asserts a prerogative to determine staffing levels given its budgetary constraints and financial conditions and the lack of any contractual language setting work hours for teaching assistants. However, the higher labor costs of full-time positions with benefits do not make this issue non-negotiable or

non-arbitrable.[3/] Also, the Board has not shown how the grievance, if sustained, would significantly interfere with its prerogative to determine staffing levels or set educational policy.[4/] Finally, whether the parties' contract permits the Board to change work hours is an issue of contract interpretation that must be raised to the arbitrator.

ORDER

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

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

3/ The cases cited by the Board are inapt. Wood-Ridge Bd. of Ed., P.E.R.C 2000-109, 26 NJPER 317 (¶31128 2000), involved a 20-minute shift in the work day for two teachers; compensation for performing the duty was found legally arbitrable. Passaic Bd. of Ed., P.E.R.C. 2001-54, 27 NJPER 182 (¶32059 2001), held that an uncompensated increase in the work day was legally arbitrable. Ridgewood Bd. of Ed., P.E.R.C. No. 93-81, 19 NJPER 208 (¶24098 1993), aff'd 20 NJPER 410 (¶25208 App. Div. 1994), certif. den. 137 N.J. 312 (1994), involved subcontracted work. North Bergen Bd. of Ed., P.E.R.C. No. 82-109, 8 NJPER 317 (¶13143 1982), involved the number of teaching aides to be employed, rather than any issue concerning the aides' work hours or compensation. Finally, Union City Bd. of Ed., P.E.R.C. No. 84-79, 10 NJPER 46 (¶15026 1983), determined the negotiability of numerous contract articles and the Board has not explained how any ruling applies to this dispute.

4/ The only evidence of why the Board reduced the number of full-time positions comes from the Superintendent's certification. He states that the Board budgeted for a certain number of full-time and part-time positions "following its determination as to how many teaching assistant hours would be required to provide an education to the District's special education students."

ISSUED: June 29, 2006

Trenton, New Jersey