

P.E.R.C. NO. 2007-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WATCHUNG HILLS REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-2007-011
SN-2007-012

WATCHUNG HILLS REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Watchung Hills Regional Board of Education for restraints of binding arbitration of two grievances filed by the Watchung Hills Regional Education Association. The first grievance seeks extra compensation for guidance counselors assigned to classroom teaching duties. The second grievance seeks extra compensation for guidance counselors assigned additional students. The Commission holds that compensation is mandatorily negotiable. Whether the parties' contract requires additional compensation for increased workload and whether, in fact, these guidance counselors had their workload increased beyond contractual limits are issues of contract interpretation reserved for an 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.

P.E.R.C. NO. 2007-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WATCHUNG HILLS REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-2007-011
SN-2007-012

WATCHUNG HILLS REGIONAL
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys (Anthony P. Sciarillo, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys (Keith Waldman, on the brief)

DECISION

On August 22, 2006, the Watchung Hills Regional Board of Education petitioned for scope of negotiations determinations. The Board seeks restraints of binding arbitration of two grievances filed by the Watchung Hills Regional Education Association. The first grievance seeks extra compensation for guidance counselors assigned to classroom teaching duties (SN-2007-011). The second grievance seeks extra compensation for guidance counselors assigned additional students (SN-2007-012).

The parties have filed briefs and exhibits.^{1/} The Board has filed the certification of Superintendent Frances C. Stromsland. The Association has submitted the certifications of five guidance counselors. These facts appear.

The Association represents teachers and certain other certificated employees, including guidance counselors. The parties' collective negotiations agreement is effective from July 1, 2005 through June 30, 2008. The grievance procedure ends in binding arbitration.

In September 2005, following its determination as to how many classroom teachers would be needed, the Board assigned classroom teaching duties to guidance counselors. When the counselors were assigned classroom duties, they generally could not meet with students in the guidance office. When advised of the assignments, the Association requested preparation time for the counselors.

Effective December 31, 2005, one guidance counselor at the Watchung Hills Regional High School retired. From January 1, 2006 through March 2, 2006, the remaining guidance counselors were each assigned an additional 20-25 students.

The Association has submitted the certifications of five guidance counselors. They state that their workload

^{1/} We deny the Association's motion for leave to file a sur-reply brief.

significantly and measurably increased following the assignment of additional students and the addition of a classroom teaching period. They all stated that they did not have a paid preparation period. Most stated that their work day increased because they arrived earlier, worked later, and worked during lunch. Some stated that they worked at home on weekends. On February 14, 2006, the Association filed two grievances. The first grievance stated:

The guidance counselors have been assigned classroom teaching duties for the 2005-2006 school year. Therefore in accordance with Article V. (Grievance Procedure) of the current Agreement between the Association and the Board of Education, the Association on behalf of the guidance counselors submits the above matter as a grievance. The WHREA views these new additional classroom teaching duties as a change in the regular working conditions for guidance counselors, a violation of the terms and conditions of employment, as well as any other relevant articles violated in the collective bargaining agreement.

As a remedy, the grievance sought extra compensation, guaranteed preparation time for the teaching responsibilities, and a sidebar to the parties' agreement documenting this change in working conditions. The superintendent responded that the grievance was untimely.

The second grievance stated:

The guidance counselors have been assigned additional students to counsel for the months of January and February during the 2005-2006 school year. Therefore in accordance with

Article V. (Grievance Procedure) of the current Agreement between the Association and the Board of Education, the Association on behalf of the guidance counselors submits the above matter as a grievance. The WHREA views these new additional students added to the counselors caseload as a violation of the terms and conditions of employment, as well as any other relevant articles violated in the collective bargaining agreement.

As relief, the grievance sought extra compensation retroactive from January 1 through February 28, 2006, the period of responsibility for the additional students. In response to the grievance, the superintendent wrote that the situation would end on March 2, when a new counselor would join the department. In a memorandum to the Association's president, the superintendent stated, in part, that:

by temporarily assigning the students to a particular counselor, the Director hoped to alleviate some of the concerns of parents and students who would be making a transition to a new counselor. . . .

However, the administration feels that the counselors do deserve some acknowledgment for taking on these additional students. The appropriate compensation we will recommend in acknowledgment of their additional caseload is up to one (1) comp day per counselor for those counselors who can demonstrate via their logs the amount of contact they had with each additional student. I am also making this recommendation as a one time offer without establishing any past practice.

The Association was not satisfied with that offer.

On June 6, 2006, the Association demanded arbitration of the two grievances. These petitions 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 may have.

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

[A] subject is negotiable between public employees and the employer if (1) the subject 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 argues that the assignment of classroom teaching duties to guidance counselors is a managerial prerogative notwithstanding an obligation to negotiate over compensation, if compensation is warranted based on the certifications of the guidance counselors. The superintendent states that these assignments did not necessarily increase the work load for the guidance counselors because when they were assigned classroom duty, they could not meet with students in the guidance office. The Board also argues that it has a managerial prerogative to determine guidance counselors' case loads and the staffing levels of guidance counselor positions.

The Association does not disagree with the Board's assertions that it has a managerial prerogative to assign guidance counselors to classroom duties and the discretion to make staffing decisions. The Association argues that severable negotiable and arbitrable issues result from these workload increases, namely, additional compensation for additional work hours and workload.

The Board's reply brief disputes that the assignment of increased student case loads to guidance counselors or the assignment of classroom duties resulted in an increase in work hours requiring negotiations over additional compensation. The Board states that the counselors' certifications show that most worked the same or nearly the same number of hours before and

after the assignments and one worked fewer hours.^{2/} The Board notes that it did offer one compensatory day off for each guidance counselor who could demonstrate that the amount of their daily student contact time increased as a result of the assignment.

There is no dispute over the Board's right to assign extra students to guidance counselors or to require them to teach a class. In the grievance stemming from the assignment of extra students, the dispute is limited to the Association's seeking extra compensation for an alleged increase in workload. In the grievance stemming from the assignment to teach a class, the dispute is limited to the Association's seeking extra compensation, guaranteed preparation time, and a sidebar documenting this change in working conditions.

Compensation for an alleged increase in the workload of guidance counselors has been found to be mandatorily negotiable. Sayreville Bd. of Ed., P.E.R.C. No. 84-74, 10 NJPER 37 (¶15021 1983). In Sayreville, like here, the increased workload took the form of the assignment of a teaching period to guidance counselors. A school board has a managerial prerogative to make such assignments, but agreeing to compensate guidance counselors

^{2/} One counselor contradicted herself by stating that her range of hours worked per week decreased yet as a result of the changed workload, she had to work weekends, stay at work later, and work during her lunch.

for the change in duties, whether through money or preparation time or both, does not significantly interfere with the prerogative to make the assignment.

As for the assignment of additional students, in Franklin Tp. Bd. of Ed., P.E.R.C. No. 2003-58, 29 NJPER 97 (¶27 2003), aff'd 30 NJPER 201 (¶75 App. Div. 2004), certif. den. 181 N.J. 547 (2004), we addressed the case law on grievances seeking compensation for increased workload in the context of teachers' having to teach additional students. We held that although a limit on class size is not negotiable, a contractual provision providing for additional compensation if class size exceeds some number would be a legally arbitrable workload/compensation clause. The Court affirmed that holding.

The Association is not seeking to arbitrate a claim that the Board could not assign additional students to guidance counselors. If the increase in assigned students resulted in an increase in work hours, the employees' interest in seeking extra compensation outweighs the employer's interest in unilaterally determining that the work must be performed without additional compensation. Willingboro Bd. of Ed., P.E.R.C. No. 97-78, 23 NJPER 36 (¶28025 1996) (union could arbitrate claim for additional compensation for assignment of additional cases to child study team members); Lower Camden Cty. Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 93-65, 19 NJPER 119 (¶24057 1993)

(additional compensation for increased workload severable from decision to assign extra cases to child study team); Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987) (board had prerogative to assign additional teaching periods, but union could arbitrate compensation claim); contrast Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 87-137, 13 NJPER 360 (¶18148 1987) (grievance alleging increased workload for social worker not legally arbitrable where increase stemmed from reduction in force and no allegation that employee would have to work longer hours or during duty-free time).

Whether the parties' contract requires additional compensation for increased workload and whether, in fact, these guidance counselors had their workload increased beyond contractual limits are issues of contract interpretation reserved to an arbitrator.

ORDER

The requests of the Watchung Hills Regional Board of Education for restraints of binding arbitration are denied.

BY ORDER OF THE COMMISSION

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

ISSUED: December 14, 2006

Trenton, New Jersey