

P.E.R.C. NO. 2007-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY SPECIAL SERVICES
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2007-052

BERGEN COUNTY SPECIAL SERVICES
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Bergen County Special Services Board of Education for a restraint of binding arbitration of a grievance filed by the Bergen County Special Services Education Association. The grievance asserts that the Board violated the parties' contract when it did not pay a teaching assistant a stipend for transporting students off campus for community-based instruction. The Commission holds that whether the employees assigned to these transportation duties are eligible to be paid a stipend for these trips is a negotiable compensation question.

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, Nowell Amoroso Klein Bierman,
attorneys (William C. Soukas, on the briefs)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, on the brief)

DECISION

On February 28, 2007, the Bergen County Special Services Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bergen County Special Services Education Association. The Association asserts that the Board violated the parties' contract when it did not pay a teaching assistant a stipend for transporting students off campus for community-based instruction. We decline to restrain arbitration over this negotiable compensation claim.

The parties have filed briefs and exhibits. The Board has submitted the certifications of an Assistant Superintendent and its Director of Human Resources. These facts appear.

The Association represents teachers, teacher assistants, and other staff. The parties' collective negotiations agreement is effective from July 1, 2005 through June 30, 2008. The grievance procedure ends in binding arbitration.

Article IV is entitled Salaries and Provision #17 is entitled Commercial Driver License. That provision states:

Each teacher assistant, behavior specialist, CART, rehabilitation workshop assistant and rehabilitation workshop instructor who maintains a valid commercial driver license, holds an exemplary driving record, and agrees to drive for a field trip will receive \$30.00 payment per field trip. The Superintendent or his/her designee shall select and designate drivers from the list of Board approved volunteers holding a valid commercial driver's license.

The Board provides services to students with disabilities, including autistic spectrum disorder. Its Autism Continuum includes the New Bridges Curriculum Program; this program is premised on the educational model of "community-based instruction" and operates as a "school without walls" with the participation of professionals, families and community members in the settings of school, home, and community. Much of the New Bridges curriculum focuses on community-based instruction facilitating the students' transition to work and adult life and

involving sustained and repeated instructional activities outside the school building.

Community-based instruction is a mandated practice as measured by the statewide assessment for students with disabilities and students engaging in community activities must have measurable goals related to those activities in their individual education plans. Community-based instruction is intended to teach the Core Curriculum Content Standards and encompasses employment-related experiences and exploration, recreation, and other activities such as shopping, banking, and using the post office. The Board considers such instruction to be a form of actual instruction directly connected to classroom instruction; it contrasts "field trips," which it believes constitute, at most, an "add-on" for instruction.

Michael Hendrickson is a teacher assistant and a frequent driver for New Bridges activities. The Association filed a grievance asserting that Hendrickson should be paid a stipend of \$30 a trip under Provision #17 and seeking payment for approximately 50 previous trips.

The Director of Human Resources denied the grievance. He wrote that trips related to community-based instruction have never been compensated as field trips; the parties did not expand the definition of "field trip" in their last negotiations; the grievance was untimely; and the district has a longstanding

practice of transporting students throughout the day for mainstreaming and other instruction-based work.

The Board also denied the grievance, asserting that these trips are not field trips. The Association demanded arbitration and 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 may have. We specifically do not consider the timeliness or contractual arbitrability of the grievance, the meaning of "field trip" in Provision #17, or the negotiations history concerning that provision.

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 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 parties do not dispute that the Board has a right to offer community-based instruction and to assign qualified teaching assistants such as Hendrickson to drive students to and from community activities as needed. The sole issue is whether the employees assigned to these transportation duties are eligible to be paid the stipend for "field trips" under Provision #17. That is a severable and negotiable compensation question under settled case law holding compensation claims to be within the scope of negotiations. See, e.g., Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 331-332 (1989); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-8 (1973); Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super. 35, 48 (App. Div. 1980); 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). The

Board's assertions about the integration of community activities into the curriculum and classroom instruction go not to the negotiability of the compensation claim, but to whether these activities fall within the classification of "field trip" under the contract. The answer to that question depends upon what the parties meant when they negotiated the wording of Provision #17 and that is a question an arbitrator must answer. We accordingly decline to restrain arbitration.

ORDER

The request of the Bergen County Special Services 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.

ISSUED: May 31, 2007

Trenton, New Jersey