

P.E.R.C. NO. 2008-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2008-035

MATAWAN-ABERDEEN TEACHERS'
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Matawan-Aberdeen Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Matawan-Aberdeen Teachers Association. The grievance contests the Board's decision to use the math and science faculty room as a classroom and to have the math and science faculty share the world language and business faculty room. The Commission holds that this dispute involves the question of whether there is a contractual requirement for a separate math and science faculty room and the viability of proposed alternatives. These issues go to the merits of the grievance and must be made to an arbitrator. Should the arbitrator issue a remedy that the Board believes would require a major capital expense or significantly interfere with its educational objectives, it may re-file its scope petition.

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, Kenney, Gross, Kovats & Parton,
attorneys (Gabrielle A. Pettineo and Michael J. Gross,
on the briefs)

For the Respondent, Detzky & Hunter, LLC, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On November 20, 2007, the Matawan-Aberdeen Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Matawan-Aberdeen Teachers Association. The grievance contests the Board's decision to use the math and science faculty room as a classroom and to have the math and science faculty share the world language and business faculty room. We deny the Board's request for a restraint.

The parties have filed briefs, exhibits and certifications. The exhibits and certifications reveal the following information.

The Association represents certified teachers and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2004 through June 30, 2007. The grievance procedure ends in binding arbitration. Article VII requires that air conditioning be installed in each faculty room.

The Board has submitted the certification of Joel Glastein, superintendent of schools. Glastein states that at the end of the 2006-2007 school year, the Board decided to convert the high school math and science faculty room into a math classroom. As a result of the conversion, the math and science and the language and business faculty rooms were combined. Glastein asserts that there was no other space to put the "much needed classroom." The administration considered using the weight room to create another faculty room but the 2007-2008 budget was defeated and there were no funds available to pay for the conversion.

Glastein further states that for the 2006-2007 school year, there were approximately 20 available work spaces at modules in the math and science faculty room. Currently there are approximately 17 work spaces available in the combined faculty room. He contends that there are never more than ten teachers who have a free period at any given time during the school day and therefore there is more than enough work space available, although some teachers may be required to share the work space. He states that science teachers use their own "prep rooms" to

prepare for their classes and rarely use the faculty room to work. He further states that there are no other alternatives available to the administration that would not require a capital expenditure.

The Association submitted the certification of Carl Kosmyna, its president. Kosmyna disagrees that there is sufficient space to accommodate all of the math and science teachers. He asserts that there were alternatives that would have maintained the faculty room without any capital expenditures. Kosmyna states that the athletic director is currently using a conference room as an office, when he could be using a smaller office. The conference room would then provide for approximately one-half the space of the math and science faculty room. He maintains that there would have been no inconvenience to the athletic director since he would have had the same space available to him that had existed in the district for many years.

Kosmyna also contends that there was space available in the area behind the auditorium that could have been used as a faculty room. He states that the administration uses this area for storage and that there are alternative storage areas available. He also states that combining administrative offices would have provided additional space for a faculty room, although he does not specify which administrative space he is referring to.

Glastein responds that the athletic conference room is not only used as an office, but is also a place where coaches meet in season and where college coaches meet with students. Glastein asserts that even if vacated by the athletic department, the space is only 12 x 12 feet and is still too small. He also asserts that the storage room behind the auditorium is unfeasible because the space is an unfinished closet. Not only would the space require cosmetic renovation, but there is no ventilation system and the installation of a drop ceiling would be required because the ceiling is unfinished. Creating a faculty room that would meet OSHA requirements would require major expenditures. Also, the parties' contract provides that all faculty rooms must have air conditioning and this space does not have an air-conditioning system. With regard to Kosmyna's assertion that administrative offices can be combined, Glastein contends that he is unsure which offices are being referred to since the administrative space at the high school is filled to capacity.

On June 21, 2007, the Association filed a grievance protesting the removal of the math and science faculty from their office. As relief, the grievance seeks to have the those departments returned to their 2006-2007 office. The Board denied the grievance stating that it had no obligation to provide a specific number of faculty offices. On June 29, the Association

notified the Board that it was proceeding to 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]

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

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

[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 maintains that under Byram Tp. Bd. of Ed. v. Byram Tp. Ed. Ass'n, 152 N.J. Super. 12 (App. Div. 1977), this grievance is not legally arbitrable as it would involve a major capital expenditure or reallocation of space. The Board asserts that it was required to combine the faculty offices into one area to have an additional classroom and that all departments have faculty rooms, even if the space is shared or less expansive than before. It maintains that if it had not used this area, it would have been forced to use part of the gymnasium and weight room, thus depriving the students of these resources. Finally, the Board contends that there is no contract provision requiring it to provide a separate faculty room for each department.

The Association argues that the Board had alternatives that would have allowed it to maintain separate space for both faculty offices without requiring any capital expenditures.^{1/}

Byram Tp. held that teacher facilities are mandatorily negotiable provided a negotiated agreement does not "constitute a capital improvement involving a major budgetary expense," or "significantly interfere with management's educational

^{1/} The Association appears to no longer be arguing for the relief sought in the grievance, that the math and science departments be returned to their 2006-2007 office.

responsibilities." Byram Tp., 152 N.J. at 24. Here, the dispute involves the question of whether there is a contractual requirement for a separate math and science faculty room and the viability of proposed alternatives. These issues go to the merits of the grievance and must be made to an arbitrator. Should the arbitrator issue a remedy that the Board believes would require a major capital expense or significantly interfere with its educational objectives, it may re-file its scope petition. Byram Tp., 152 N.J. at 22; Rutgers, The State Univ., P.E.R.C. No. 96-39, 22 NJPER 23 (¶27010 1995).

ORDER

The Matawan-Aberdeen Regional Board of Education's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: March 27, 2008

Trenton, New Jersey