P.E.R.C. NO. 2012-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOWELL TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2011-058

HOWELL TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment relations Commission grants the request of the Howell township Board of Education for a restraint of binding arbitration of a grievance filed by the Howell Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement by assigning more than 30 students to physical education and health classes. The Commission holds that the class size is not mandatorily negotiable.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Robin T. McMahon, of counsel)

For the Respondent, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, of counsel)

DECISION

On February 11, 2011, the Howell Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Howell Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement by assigning more than 30 students to physical education and health classes. As class size limits are not negotiable, and the record does not indicate that the dispute involves severable workload or compensation claims, we restrain arbitration.

The parties have filed briefs. The Board has filed exhibits and the certification of its Assistant Superintendent of Curriculum and Personnel. These facts appear.

The Association represents professional and clerical employees including certificated teachers. The parties' most recent collective negotiations agreement is effective from July 1, 2008 through June 30, 2011. The grievance procedure ends in binding arbitration.

Article 5 of the agreement is a management rights clause. Article 16, "Class Size" reads:

> The Board agrees that the size of the class is important both to the students' and teachers' effectiveness. Therefore, the Board will continue its efforts to achieve reasonable class size. In this regard the Board's objective is an average of less than thirty (30) students per class and will take every reasonable step to achieve this objective.

On November 23, 2010, the Association, referring to Articles 5 and 16, filed a grievance asserting that Physical Education and Health Classes should not exceed 30 students and seeking that the Board adhere to that limit. The Association and administrators discussed the grievance at the succeeding stages of the procedure. Written responses were made at each step denying the grievance.

On January 26, 2011, the Association demanded arbitration, describing the grievance as "class size physical education staff - contract violation." 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.

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 Board, citing both recent and early Commission and court decisions, argues that class size limits are not negotiable and may not be enforced through binding grievance arbitration. It notes that some of those precedents involved contract language substantially similar to Article 16 of its agreement with the Association.

The Association responds that, during the processing of the grievance, its representatives acknowledged that it could not enforce class size limits. However, it argues that it sought compensation for workload increases resulting from the oversized classes and that such claims are severable from class size limits and may be submitted to binding arbitration.

The Board replies that, even if it accepted the Association's argument that compensation is a severable and negotiable issue, in this dispute, no demand for compensation has been made and the grievance and demand for arbitration directly challenges the class size limits.

In general, limits on class size are neither negotiable nor arbitrable. See, e.g., Cumberland Cty. College, P.E.R.C. No.

83-95, 9 NJPER 90 (¶14048 1983). Although increasing class size impacts teacher workload, it does not lengthen a teacher's work day or pupil contact time and is predominately an issue of educational policy. 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). However, Franklin Tp. also holds that majority representatives and school boards may agree that teachers will receive additional compensation if class size exceeds a specified number. Such clauses are enforceable workload/compensation clauses. See Wanaque Bor. Bd. of Ed., P.E.R.C. No. 2003-69, 29 NJPER 157 (¶45 2003); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp.2d 258 (¶214 App. Div. 1991).

Here, the Association's grievance directly challenges the size of physical education and health classes.[1/] Unlike Franklin Tp. Bd. of Ed., nothing in the documents generated by the grievance processing or in the demand for arbitration establishes that the Association was seeking to enforce an alleged agreement or practice to compensate teachers with "oversize" classes. New Jersey Institute of Technology, P.E.R.C. No. 86-63, 11 NJPER 721,

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1/ The Association has not submitted a certification asserting that its grievance seeks compensation, as opposed to a directive that the Board restore and adhere to a specific class size maximum. See N.J.A.C. 19:13-3.6(f)(1).

722 (¶16253 1985), involving a challenge to a professor’s teaching assignments, noted under a similar record:

> We do not consider whether additional compensation for increased teaching time is in the abstract mandatorily negotiable since the grievance documents and the demand for arbitration do not suggest that compensation is in issue.

ORDER

The request of the Howell Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson and Wall voted in favor of this decision. Commissioners Jones, Krengel and Voos voted against this decision.

ISSUED: January 26, 2012

Trenton, New Jersey