

P.E.R.C. NO. 2012-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIR LAWN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2011-084

FAIR LAWN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Fair lawn Board of Education for a restraint of binding arbitration of a grievance file by the Fair Lawn Education Association. The grievance contests the elimination of a bowling coach position and the combining of the girls' and boys' bowling teams into one team with one coach. The Commission restrains arbitration to the extent the grievance challenges the Board's decision to eliminate the coach position and denies the request to the extent the grievance challenges the compensation paid to the remaining coach.

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. 2012-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIR LAWN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2011-084

FAIR LAWN EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Schenck, Price, Smith & King, LLP,
attorneys (Paul H. Green, of counsel; Joseph L.
Roselle, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION

On May 17, 2011, the Fair Lawn Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Fair Lawn Education Association. The grievance contests the elimination of a bowling coach position and the combining of the girls' and boys' bowling teams into one team with one coach.

The parties have filed briefs. The Board has filed a certification of Superintendent Bruce Watson with attached exhibits. These facts appear.

The Association represents the Board's certificated employees. The parties' collective negotiations agreement is

effective from July 1, 2007 through June 30, 2010. The grievance procedure ends in binding arbitration.

Prior to the 2010-2011 school year, the Board suffered a reduction of State aid of approximately \$4,000,000.00 resulting in a budget shortfall in the proposed budget for that year. In response, the Superintendent recommended several cost saving measures including the elimination of one of the bowling coach positions and consolidation of the two positions into a single coach for both the boys' and girls' bowling teams. The Superintendent certifies that the consolidation would have a minimum impact, if any, on the operations of either team since the teams already practiced and competed at the same time and at the same location. The Superintendent also recommended the total elimination of two other sports teams.

The Board approved the Superintendent's recommendation and one bowling coach position was eliminated. On October 20, 2010, the Association filed a grievance challenging the Board's actions. The grievance asserts:

The FLEA grieves the FLBOE eliminating one of two head coach bowling positions making one coach responsible for both boys' and girls' bowling teams. In schedule "c" of the agreement between FLBOE and FLEA, bowling is listed as having two head coaches. FLEA is asking that the bowling coaches positions remain as two positions as stated in the contract.

The grievance was denied at all levels of the grievance procedure. On November 11, 2010, the Board's response read:

The bowling coach was one of many RIF'd positions. There is currently no money in the budget to restore same. The Board must therefore deny your grievance.

On November 23, the Association demanded binding 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 contractual merits of the Association's grievance or any contractual defenses the Board may 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]

Before 1990, appointments and non-reappointments to coaching positions were not mandatorily negotiable or legally arbitrable. Teaneck Bd. of Ed. and Teaneck Teachers Ass'n, 94 N.J. 9 (1983). Effective January 4, 1990, however, the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., was supplemented to include this language:

All aspects of assignments to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations ... except that the establishment of qualifications for such positions shall not constitute a mandatory subject of negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate....

[N.J.S.A. 34:13A-23]

In Holmdel Tp. Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991), we applied this amendment to permit arbitration over the non-retention of a coach of the basketball and baseball teams. Unlike Holmdel, however, the instant case involves a decision to reduce a budget shortfall through the elimination of a coaching position. The decision as to how many bowling coaches to employ is a managerial prerogative of the public employer. Applying the Local 195 balancing test, we have consistently held that such staffing levels are not mandatorily negotiable. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 99-88, 25 NJPER 172 (¶30078 1999) (Board has a managerial prerogative to eliminate two cafeteria operator positions); Jackson Tp. Bd. of Ed., P.E.R.C. No. 2006-8, 31 NJPER 249 (¶96 2005) (Board has a managerial prerogative to eliminate day security at school). Accordingly, we grant the Board's request for a restraint of binding arbitration on this issue. An arbitrator may not second-guess the action of the Board and undo the elimination of the bowling coach position.

The Association further asserts that the grievance also alleges a breach of the parties' agreement for the resulting increase in the remaining bowling coach's workload for the same compensation.^{1/} The Board responds that is not asserted in the

^{1/} The Association does not assert what remedy it seeks for this part of the grievance.

grievance and even if it were, the additional work for the remaining bowling coach was an unavoidable consequence of the elimination of the other position. See North Hunterdon Reg. H.S. Dist., P.E.R.C. No. 86-55, 11 NJPER 707 (¶19212 1988). Since North Hunterdon, we have clarified that the question of whether a grievance or demand raises a particular contractual claim presents a contractual arbitrability question rather than a precondition to a legal arbitrability determination. See Neptune Tp. Bd. of Ed., P.E.R.C. No. 93-36, 19 NJPER 2 (¶24001 1992); City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988). The negotiated terms and conditions of an employee for an extracurricular assignment is mandatorily negotiable and therefore, legally arbitrable, especially in light of the statutory amendment. N.J.S.A. 34:13A-23; Holmdel. To the extent the grievance makes this allegation, the parties' may arbitrate that claim. We make no determination as to what remedy would be available to the arbitrator if a contractual violation were sustained. Any argument by the Board that the grievance does not encompass this claim must be made to the arbitrator.

ORDER

The request of the Fair Lawn Board of Education for a restraint of binding arbitration is granted to the extent the grievance challenges the Board's decision to eliminate a bowling coach position. The request is denied to the extent the grievance challenges the compensation paid to the remaining bowling coach.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: April 26, 2012

Trenton, New Jersey