

P.E.R.C. NO. 2013-55

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROSELLE PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2012-033

ROSELLE PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Roselle Park Board of Education for a restraint of binding arbitration of a grievance filed by the Roselle Park Education Association. The grievance seeks compensation for time spent by teachers assigned to school lunch supervision. The Commission holds that the issue of additional compensation for teachers assigned to lunch supervision is 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, Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys (Anthony P. Sciarrillo, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Gail Oxfeld Kanef, of counsel)

DECISION

On January 11, 2012, the Roselle Park Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Roselle Park Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement ("CNA") when it decreased the duty free lunch periods of elementary and middle school teachers and directed those teachers to perform lunch duty without compensation, thereby increasing student contact time. The grievance further asserts that this change violates the past practice permitting members who elected to have a shortened duty free lunch period and

elected to take a lunch duty during the remaining time were compensated for that duty. We deny the Board's request for a restraint of binding arbitration.

The Board filed briefs and exhibits and has submitted the certification of the Superintendent. The Association filed a brief. These facts appear.

The Association represents employees in the following titles: teacher, guidance counselors, secretary, library clerk, child study team, substance awareness coordinator, paraprofessional, teachers assistant, administrative aide, nurse's aide, enterprise clerk, computer aide. The parties' CNA was effective from July 1, 2009 through June 30, 2012. The grievance procedure ends in binding arbitration.

Article X is entitled Teaching Hours and Teaching Load and Provision E. 3. provides:

Elementary school teachers may be assigned school lunch supervision on a rotating schedule without additional compensation. Any teacher, if needed, who volunteers for school lunch time supervision during his/her duty free lunch period will be compensated at a rate of:

2009-2012 \$18.97 per day

The grievance asserts that the past practice of the parties<sup>1/</sup> was to allow teachers to give up all or part of their

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<sup>1/</sup> N.J.A.C. 19:13-3.6(f)(1) provides that all briefs filed with the Commission shall: " Recite all pertinent facts supported (continued...)

duty free lunch period and volunteer for school lunch supervision and be paid accordingly as set forth in the CNA. In September 2011, the Board implemented the procedure that was negotiated in the CNA at Article X, Provision E. 3., by assigning teachers to school lunch supervision on a rotating basis without compensation. The Association's grievance followed. The Superintendent denied the grievance on "procedural and substantive" grounds finding that there was no violation of the CNA. The Board also denied the grievance on the same basis. 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.

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1/ (...continued)  
by certification(s) based on personal knowledge." The only certification in the record, provided by the Board's Superintendent, did not address the past practice between the parties or how the practice changed in September 2011.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have. We specifically do not consider contractual arbitrability of the grievance or the fact that the school lunch supervision assignment provision in the CNA was negotiated by the parties.

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 assign teachers to school lunch supervision. The sole issue is whether the employees assigned to that duty are eligible to be paid compensation for performing that function. 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); Bergen Cty Special Services Bd. of Ed. 33 NJPER 126 (¶46 1983); Rockaway Bd. of Ed. P.E.R.C. No. 84-8, 9 NJPER 534 (¶14219 1983).

The Board's assertions that the CNA provision was negotiated between the parties and allows for the assignment of teachers to school lunch supervision without additional compensation is a contractual defense to the merits of the compensation claim; it does not change the fact that the compensation issue is still within the scope of negotiations. See Ridgefield Park, supra. We accordingly decline to restrain arbitration.

ORDER

The request of the Roselle Park Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: January 31, 2013

Trenton, New Jersey