

P.E.R.C. NO. 2013-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2012-068

RED BANK REGIONAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Red Bank Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Red Bank Regional Education Association. The grievance asserts that the Board has been making teaching assignments in excess of the contractual limit. The Commission holds that the dispute about workload limits 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, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, of counsel)

DECISION

On May 14, 2012, the Red Bank 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 Red Bank Regional Education Association which asserted that the Board has been making teaching assignments in excess of the contractual limit. We decline to restrain arbitration.

The parties have filed briefs and exhibits. The Board has filed the certification of its Superintendent, Dr. James Stefankiewicz. The Association has filed a certification of its President, Mary Karlo.

The Board and Association are parties to a collective negotiations agreement with a term of July 1, 2008 through June 30, 2011. The grievance procedure ends in binding arbitration. Article VI (B) (1) states that teachers may be scheduled for either five or six teaching assignments.

The Association filed a grievance asserting that the Board has been assigning teachers seven or eight teaching assignments. The grievance was denied and this petition ensued.

The Associations's President certifies that teachers are now being required to do more than six teaching assignments without additional compensation because instead of using a single curriculum, single grade roster and same text in one class period, teachers must plan two or more lessons, implement two or more different curriculums, and must mark two or three separate tests for one class period. The Superintendent certifies that there is a well-established past practice of offering multiple sections of the same subject within the same class period.

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]

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 the grievance or any contractual defenses the employer may have.

The Board asserts that this matter touches upon their managerial prerogative of properly scheduling courses and that this matter also touches upon contract provisions relating to the establishment of class size and assignments being made within the area of teacher competency. It also contends that Association

members are not being asked to increase their workload or work hours. It further asserts that here is a past practice of scheduling two or more subject levels within the same class.

The Association responds that the number of teaching assignments is a mandatory subject of collective negotiations and that the Board's arguments touch upon the merits of the case which are outside of our limited scope of negotiations jurisdiction.

We find that the gravamen of this dispute centers around a workload issue - - specifically whether the assigned workload for teachers exceeds the limit set by the contract. It is well established that work load limits are mandatorily negotiable. In Re Byram Twp., 152 N.J. Super. 12, 19 (App. Div. 1977); West Paterson Bd. Of Ed., P.E.R.C. No. 95-102, 21 NJPER 222 (¶26140 1995); Ramsey Bd. of Ed. and Ramsey Teachers. Ass'n, P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd NJPER Supp.2d 160 (¶141 App. Div. 1986). Whether the phrase "teaching assignment" as used in the contract means different subjects or multiple levels within the same subject, whether there is a past practice establishing the Board's current method of teaching assignments, whether teachers' workload has actually increased, and whether the Board has contractual defenses are questions for the arbitrator to decide. Ridgefield Park.

ORDER

The Red Bank Regional Board of Education's scope of negotiations petition is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: June 27, 2013

Trenton, New Jersey