

P.E.R.C. NO. 2013-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTHERN BURLINGTON COUNTY
REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2012-015

NORTHERN BURLINGTON COUNTY
REGIONAL BOARD TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Northern Burlington County Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Northern Burlington County Regional Board Teachers' Association. The grievance seeks compensation for curriculum work assigned to teaching staff during three professional development days. The Commission holds that arbitration of the grievance would not significantly interfere with the Board's educational prerogative to schedule in-service days or determine teacher work assignments on those days.

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, Whalen, Taylor and Hybbeneth,
consultants (William F. Hybbeneth, Consultant)

For the Respondent, Harry Zakarian, New Jersey
Education Association UniServ Representative

DECISION

On November 4, 2011, the Northern Burlington County Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks to restrain arbitration of a grievance filed by the Northern Burlington County Regional Teachers' Association. The grievance seeks compensation for curriculum work assigned to teaching staff during three "Professional Development" days during November 2010.^{1/} We conclude that arbitration of a grievance seeking compensation for curriculum work would not significantly interfere with the

^{1/} Students were not present on these dates.

Board's educational prerogative to schedule in-service days as part of the work year, or to determine what assignments will be given to teachers on those dates. Accordingly, we will deny the Board's request to restrain arbitration.^{2/}

The parties have filed briefs and exhibits.^{3/} The Board and the Association are parties to a collectively negotiated agreement covering the period from July 1, 2010 through June 30, 2013. The grievance procedure ends in binding arbitration.

Article XIV, "Miscellaneous," Section F. Provides:

Payment for curriculum or other summer work shall be made in the pay period following the satisfactory completion of the work. The administration shall determine whether the work has been completed satisfactorily.

The contract also contains "Schedule C, Extracurricular Salaries." It contains several guides displaying stipends for various work including coaching and club advisor positions. The last schedule, labeled "District," contains this line:

"Curriculum Work: a week shall consist of no more than 25 hrs."

The amount of the stipend(s), linked to the contract year (e.g. 2010-2011) in which the work occurred are then displayed.

^{2/} In so doing we do not pass on whether the Association has a meritorious claim.

^{3/} Neither party has filed a certification of facts based on personal knowledge. See N.J.A.C. 19:13-3.5(f)1. We must identify the issue(s) that the Association seeks to arbitrate based upon the exhibits, including the grievance documents.

On November 22, 23 and 24, 2010, teachers and other professional and paraprofessional staff attended, from 8:00 a.m. through 1:00 p.m., "Professional Development Days." A schedule for teachers on November 22 and 23, assigns work in course content development and assessment.^{4/}

On December 3, 2010, the Association filed a grievance asserting that the Board had violated Article XIV, F when, on November 23, "teachers were directed to write curriculum (i.e. create common assessments) by the curriculum directors without additional compensation." The grievance sought compensation for all faculty who had spent time "writing curriculum work."

The Association pursued the grievance through the steps of the negotiated procedure. In denying the grievance the Superintendent of Schools wrote: "Curriculum writing during staff in-service days is within the scope of the negotiated agreement."

After the Board denied the grievance, the Association demanded binding arbitration, asserting that the Board had also violated Schedule C. The Board then filed its petition and the scheduled arbitration hearing was postponed.

In a scope of negotiations proceeding our jurisdiction is limited and bars us from deciding the merits of the underlying grievance. See Ridgefield Park Ed. Assn. v. Ridgefield Park Bd.

^{4/} The schedule implies that teachers were to work on this assignment in teams from 11:00 a.m. to 1:00 p.m. on November 22 and from 10:15 a.m. to 1:00 p.m. on the next day.

of Ed., 78 N.J. 144, 154 (1978). As neither party has filed a certification, nor made additional factual allegations in their submissions, we are without information that would be useful to know, including whether in-service days in past school years have included curriculum-related assignments and whether additional compensation has been distributed in such circumstances.

However, we do find that the grievance makes no claim that the Board lacked the right to assign the curriculum work.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (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.

No statute or regulation is asserted to preempt negotiations. Where a school district's educational prerogatives to schedule professional development days for teachers and other staff within the negotiated work year, and to determine the

professional activities and training to be performed during those sessions are unaffected, a claim that employees are entitled to additional compensation for activities performed during a portion of that training presents a mandatorily negotiable claim. Such situations involve issues of compensation for changes in teacher workload and may be resolved through binding arbitration.^{5/} Cf. Newark Bd. of Ed. and Newark Teachers Union, Local No. 481, AFT, P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd NJPER Supp.2d 72 (¶55 App. Div. 1980); Carteret Bd. of Ed. and Carteret Ed. Ass'n, P.E.R.C. No. 80-30, 5 NJPER 397 (¶10205 1979), aff'd NJPER Supp.2d 87 (¶69 App. Div. 1980).^{6/}

As this is a scope of negotiations case we decide only if the subject of the dispute is negotiable and arbitrable, the arbitrator will rule on the merits. Compare Freehold Borough Board of Education, P.E.R.C. No. 82-38, 7 NJPER 604, 605 (¶12269 1981), a combined scope of negotiations and unfair practice case,

^{5/} The cases cited by the Board all involve challenges to a public employer's prerogative to determine appropriate employee training or to perform tasks that are incidental to, or have no appreciable impact on their current workload. We have determined that compensation is the focus of this grievance.

^{6/} The parties have not cited, and we could not find, a payment for workload increase grievance that arose in the context of a professional development day where work hours were unchanged. In Carteret, the professional training at issue occurred after the normal school day.

allowing the Commission to determine whether any negotiable or compensable change in workload had occurred after the Board exercised its educational prerogative to require teachers to develop individual instruction plans for students.

[W]e have both a scope petition and an unfair practice charge before us, so we must decide whether an increase in workload actually occurred and assuming it did, whether this would violate the parties' agreement, as the Board has asserted the contract as a defense.

Based upon the limited factual record in this case, we are unable to conclude that a mandatorily negotiable increase in workload actually occurred in this case. The facts indicate that there was no increase in pupil contact time, nor was there a lengthening of the teachers' work day. The only increased workload alleged is based upon the teachers' responsibility to complete IIPs for each of their students. However, the stipulated record herein does not establish what the extent, if any, of such an increase was. Moreover, assuming some measure of increased workload did occur in this matter, there is no indication in the record that any workload increase could not be accommodated within the strictures of the preparation time and compensation provisions already provided in the parties' current contract. Thus, we must conclude that the Association has not met its burden of proving the allegations of the Complaint by a preponderance of the evidence.

Here, such issues must be resolved by the arbitrator.

ORDER

The request of the Northern Burlington County Regional 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