

P.E.R.C. NO. 2014-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WINSLOW TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2013-009

WINSLOW TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Winslow Township Board of Education for a restraint of binding arbitration of grievances filed by the Winslow Township Education Association. The grievances assert that the Board violated the parties' collective negotiations agreement by eliminating two stipended positions and integrating the duties of those positions into the duties of guidance counselors and principals. The Commission holds that the Board's incorporation of the duties of the stipended positions into the guidance counselor and principal positions is a non-negotiable reorganization of its education program. The Commission finds that the unit work doctrine is not implicated because guidance counselors are in the unit, and because the Association did not provide a certification setting forth pertinent information needed to establish a unit work claim regarding the duties integrated into non-unit principal positions.

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. 2014-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WINSLOW TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2013-009

WINSLOW TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Wade, Long, Wood & Kennedy, LLC,
attorneys (Howard C. Long, Jr., of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Keith Waldman, of counsel)

DECISION

On August 27, 2012, the Winslow Township Board of Education filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of grievances filed by the Winslow Township Education Association. The grievances assert that the Board violated the parties' collective negotiations agreement by eliminating the stipended positions of Test Coordinator and Intervention and Referral Services Coordinator (I&RS Coordinator) and integrating the duties of the Test Coordinator into the duties of school principals and integrating the duties of I&RS Coordinator into the duties of guidance

counselors.^{1/} We grant the Board's request to restrain arbitration.

The Board has filed a brief, exhibits, and the certification of Lorene Moore, its Director of Human Resources. The Association has filed a brief and exhibits. These facts appear.

The Association represents a negotiations unit of certificated and non-certificated employees, excluding supervisors, administrators, and other specified positions. The Board and Association are parties to a CNA effective from July 1, 2007 through June 30, 2010. Article XIII of the CNA is entitled "Voluntary Transfers, Reassignments and Promotions, Article XVII is entitled "Salaries" and Article XXI is entitled "Teachers' Hours and Load."

The job description for I&RS Coordinator states that the position's job goal is to coordinate the activities of the building based I&RS team. The job description for the Testing Coordinator states that responsibilities include, but are not limited to: creating building-level testing schedule for test administration; maintaining test security; supporting test administration; completing necessary test documentation; and participating in test result analysis.

^{1/} A copy of the Association's initial grievances were not provided by either party, however, we ascertained the nature of the grievance based on the Board's responses.

The Board's Director of Human Resources certifies that the I&RS Coordinator and Testing Coordinator stipended positions were eliminated, and the duties of I&RS Coordinators were integrated into the regular duties of Guidance Counselors and the duties of Testing Coordinator were integrated into the regular duties of school principals. She further certifies that the reorganization was for educational policy and economic reasons.

In response to the Association's filing of a grievance relating to the Board's elimination of the I&RS Coordinator position, the Superintendent on October 28, 2009 denied the grievance and stated:

The Board of Education created and filled a full-time Counseling position at each of the elementary schools. One of their duties is to coordinate the I&RS process at the building level. Since I&RS duties are absorbed by the Counselor, there is no reason to post for a position that is no longer needed. On the other hand, why would the District pull a staff member from their duties and pay them a stipend when we have a full-time Counselor who should be performing these duties (I&RS) as part of their responsibilities?

In response to the Association's filing of a grievance relating to the Board's elimination of the Test Coordinator positions, the Superintendent on February 2, 2010 denied the grievance and, stated, in pertinent part:

There has been neither a posting for the I&RS or Testing Coordinator positions nor an appointment or assignment made for either position...I&RS Coordinator and Testing

Coordinator are no longer stipend positions. As discussed with Mr. Nevitt and Ms. O'Brien in our August 31, 2009 meeting, the duties were subsumed by the Guidance Counselors, at all levels, when the Board appointed full-time Guidance Counselors for each of the elementary schools. They now perform the I&RS and Testing Coordinator duties within the regular duties of their classification.

On February 8 and 10, 2010, respectively, the Association filed Level IV grievances concerning the elimination of the I&RS Coordinator and Testing Coordinator positions. These grievances also sought compensation for the guidance counselors now performing I&RS Coordinator and Test Coordinator duties. On March 8, the Superintendent notified the Association that the Board considered the grievances at its Regular Meeting on March 3 and affirmed the denial of the grievances. On January 13, the Association demanded arbitration and identified the grievances to be arbitrated as "failure to post positions." 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), 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].

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Board argues that it has a managerial prerogative to establish job descriptions and to require employees to perform additional duties related to their normal job duties. It asserts that it incorporated I&RS Coordinator duties into the Counselor position and Test Coordinator duties into the Principal position,

and that the additional duties were related to their existing normal duties.

The Association argues that the Commission and Courts have long held that preservation of unit work is, generally, mandatorily negotiable if it does not impinge on the employer's governmental policy determinations. Therefore, it argues, the Board's decision to eliminate the I&RS and Testing Coordinator stipend positions is legally arbitrable.

We disagree with both the Board's assertion that this case concerns its managerial prerogative to establish job descriptions, and the Association's assertion that this case implicates the unit work doctrine. We find that this case centers around the Board's reorganization of its educational program through the incorporation of the duties of the stipended positions of Testing Coordinator and I&RS Coordinator into the regular full-time positions of guidance counselors and school principals. Such changes have been held not to be mandatorily negotiable. Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills H.S. Dist. Bd. Of Ed., 176 N.J. Super. 35 (App. Div. 1980); Manchester Twp. Bd. Of Ed., P.E.R.C. 94-22, 19 NJPER 457 (¶24216 1993).

We do not find that this case implicates the unit work doctrine, which provides that an employer must negotiate before using non-unit employees to do work traditionally performed by unit employees alone. Jersey City, 154 N.J. at 575. We note

initially that the duties of I&RS Coordinators were integrated into the duties of guidance counselors, who are within the Association's unit and that only the Testing Coordinator duties were integrated into the duties of school principals who are outside of the unit. Therefore, a unit work claim would only be applicable with regard to the Testing Coordinator position. We also note that the Association did not provide a certification setting forth any pertinent information needed to establish a unit work claim, and as such, there is not enough information to support its assertion of a unit work rule violation. N.J.A.C. 19:13-3.5 (f) (1). Moreover, given that the Association has not provided a certification setting forth that there has been a significant and measurable increase in workload or work hours for guidance counselors, there is no basis in the record for finding a severable compensation claim. Bridgewater-Raritan Regional Bd. of Ed., P.E.R.C. No. 94-43, 19 NJPER 576 (¶24273 1993).

ORDER

The request of the Winslow 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 and Voos voted against this decision. Commissioner Boudreau was not present.

ISSUED: August 8, 2013

Trenton, New Jersey