P.E.R.C. NO. 2013-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL HIGH SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2013-012

FREEHOLD REGIONAL HIGH SCHOOL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Freehold Regional High School District Board of Education for a restraint of binding arbitration of a grievance filed by the Freehold Regional High School Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement by implementing a science lab schedule which assigned more students per class than there were work stations available. The Commission holds that limiting class size to the number of fixed work stations is not mandatorily negotiable because it directly implicates the employer's non-negotiable class size decisions, and that the Board has a managerial prerogative to determine what supplies are necessary to fulfill its educational mission.

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. 2013-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL HIGH SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2013-012

FREEHOLD REGIONAL HIGH SCHOOL
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Schwartz Simon Edelstein & Celso LLC, attorneys (Lawrence S. Schwartz, of counsel)

For the Respondent, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, of counsel)

DECISION

On September 7, 2012, the Freehold Regional High School District Board of Education filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of a grievance filed by the Freehold Regional High School Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it implemented a science lab class schedule which assigned more students per class than there were work stations available. We grant the Board's request for a restraint of binding arbitration.

The Board has filed briefs, exhibits, and the certification of Charles Sampson, the Board's Superintendent of Schools. The Association has filed a brief and exhibit. These facts appear.

The Association represents a unit of certificated and non-certificated employees. The Board and Association are parties to a CNA effective from July 1, 2009 through June 30, 2012. The grievance procedure ends in binding arbitration.

Article IX of the CNA is entitled "Class Size." Article IX, paragraph B. states:

> B. No more students will be assigned to a lab or vocational/technical class than there are work places in the classroom which shall include the teacher's work station.

In September 2011, the administration of Colts Neck High School implemented a science class lab schedule that the Association claims resulted in more students being assigned per lab than were work stations available. On September 26, the Association and Dr. Suzanne Koegler, Assistant Superintendent for Human Resources, held a Step 1 grievance discussion about science lab class size and work stations at Colts Neck High School.

On January 20, 2012, the Association filed a written step 2 grievance asserting:

> The Freehold Regional High School district violated Article IX, Section B of the Collective Bargaining Agreement when it assigned to Colts Neck High School Science lab classes more students than work stations.

> The discussions between Dr. Koegler and Sam Wyckoff, FREA Grievance Chairman, have failed to correct the class overages as of 20 January 2012.

The Association proposed a remedy of "assigning the appropriate number of students to Science lab classes." On February 3, Dr. Koegler denied the grievance, stating, in pertinent part:

> After an on-site inspection of the classrooms in question by both Mr. Joseph Robinson and me, it was quite apparent that there were more than adequate work places for students to perform their work effectively.

On February 7, 2012, the Association requested Board review. On March 30, the Board denied the grievance, reiterating its belief that on-site inspections indicated adequate work places for students. On April 10, 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, 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 asserts that class size is not a mandatorily negotiable subject because determination of class size is a basic educational policy decision. It argues that Cumberland County College, P.E.R.C. No. 83-95, 9 NJPER 90 (¶14048 1983) held a similar clause limiting class size to the number of work stations

to be non-negotiable because it impermissibly restricted the College's right to determine class size.

The Association argues that the grievance is not directly about class size, but is about providing teachers with a sufficient number of work stations for students in lab classes. It asserts that Byram Township Board of Education, 152 N.J. Super. 12 (App. Div. 1977), holds that the issues of providing teachers with appropriate facilities for instruction are mandatorily negotiable. The Association contends that having a sufficient number of work stations for students directly affects a teacher's work and welfare without significantly interfering with the determination of governmental policy.

The Commission has consistently held that a board of education has a non-negotiable prerogative to fix class size. See, e.g., Howell Tp. Bd. of Ed., P.E.R.C. No. 2012-40, 38 NJPER 287 (¶100 2012); Black Horse Pike Reg. S.D. Bd. of Ed., P.E.R.C. No. 2007-38, 32 NJPER 396 (¶164 2006); New Providence Bd. of Ed., P.E.R.C. No. 83-88, 9 NJPER 71 (¶14038 1982); Deptford Township Bd. of Ed., P.E.R.C. No. 83-44, 8 NJPER 603 (¶13285 1982); Freehold H.S. Bd. of Ed., P.E.R.C. No. 81-58, 6 NJPER 548 (¶11278 1980), aff'd NJPER Supp.2d 113 (¶93 App. Div. 1982).

We have specifically found that clauses limiting class size to the number of fixed work stations, lab stations, full sets of equipment, or capacity of the teaching facilities are not

mandatorily negotiable because they directly implicate the employer's class size decisions and are not limited to the impact of any such decisions on the employees' terms and conditions of employment. Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983); Cumberland County College, P.E.R.C. No. 83-95, 9 NJPER 90 (¶14048 1983); and Middlesex County College Bd. of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977). Here, Article IX, paragraph B. of the parties' CNA impermissibly restricts the Board's right to determine class size and is therefore not mandatorily negotiable or arbitrable.

Furthermore, the determination as to what supplies are necessary to fulfill the Board's educational mission is a managerial prerogative.[1/] The Commission has consistently held that in fulfilling their responsibility to provide a thorough and efficient education, boards of education must have unfettered discretion in the area of teaching materials, supplies, and facilities that best carry out this responsibility. State

---

1/ The Byram case (152 N.J. Super. 12) cited by the Association provides the negotiability standard for physical non-educational teacher facilities (e.g. faculty lounges and bathrooms), and is inapplicable to the instant case which concerns educational facilities for students. See, e.g., Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 2008-55, 34 NJPER 75 (¶31 2008); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985); and Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980). In fact, the Commission's decision in Byram, P.E.R.C. No. 76-27, 2 NJPER 143, 146-147 (1976), held that the selection of educational materials needed to implement the curriculum was not mandatorily negotiable. That part of the ruling was not appealed.

Operated School District of Paterson, P.E.R.C. No. 2009-58, 35 NJPER 136 (¶49 2009)(clause requiring certain supplies, including individual books per student, found not mandatorily negotiable); Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980), aff'd NJPER Supp.2d 101 (¶84 App. Div. 1981); and Middlesex Cty. College, supra. Here, Article IX, paragraph B. requires that each lab or vocational/technical class have one work place per student. We find that this clause significantly infringes on the Board's exclusive right to decide as a matter of policy which equipment/supplies, and in what numbers, would be educationally beneficial. Accordingly, it is not mandatorily negotiable or arbitrable.

ORDER

The request of the Freehold Regional High School District Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioner Voos voted against this decision. Commissioner Wall recused himself. Commissioner Jones was not present.

ISSUED: June 27, 2013

Trenton, New Jersey