

P.E.R.C. NO. 2015-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-030

BAYONNE TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part and denies in part the request of the Bayonne Board of Education for a restraint of binding arbitration of a grievance filed by the Bayonne Teachers Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it implemented an algebra class outside of the contractual work day without appropriate compensation for the teachers. The Commission holds that the Board's decision to add the classes and schedule them prior to the start of the normal school day is a non-arbitrable educational policy decision. The Commission declines to restrain arbitration over the severable issue of compensation for teachers of the added class.

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, Apruzzese, McDermott, Mastro & Murphy, attorneys (Robert J. Merryman, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Randi Doner April, of counsel)

DECISION

On November 6, 2013, the Bayonne Board of Education filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Bayonne Teachers Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it implemented an eighth grade algebra class outside the contractual work day and did not appropriately compensate the teachers for the additional class.

The Board has filed briefs, exhibits, and two certifications of Superintendent Dr. Patricia L. McGeehan. The Association has filed a brief, exhibits, and the certification of Association President Alan D'Angelo. These facts appear.

The Association represents a negotiations unit of teachers and other school professionals employed by the Board. The Board and Association are parties to a CNA effective from September 1, 2007 through August 31, 2010. The grievance procedure ends in binding arbitration.

Article 5:4 of the CNA is entitled "School Day." Section 5:4.1(a) provides:

The morning sessions of the elementary schools shall begin at 8:40 a.m. ending at 11:30 a.m. The afternoon session shall begin at 12:10 p.m. ending at 2:55 p.m.

Section 5:4.2 provides:

In the event of an educational or physical emergency, the Board may adjust the teacher hours. The hours to be worked during the school day as above set forth shall not be increased without mutual agreement of the Association and the Board. Said hours shall be served in a continuous manner.

McGeehan certified to the following:

- In 2013, ten of the Board's eleven elementary schools did not meet the New Jersey Department of Education's "College and Career Readiness" target of enrollment of twenty percent of seventh and eighth graders in an Algebra I class.
- The Board has set an educational policy goal of twenty percent of eighth graders being able to take Algebra I.
- The Director of Math advised that in order to succeed in Algebra I, incoming eighth graders would still need to be exposed to Eighth Grade Math.

- Students could not take Eighth Grade Math, along with all of their other required courses, and still have time to take five periods per week of Algebra I.
- There are no open class periods or study halls for eighth grade students.
- In order to allow eighth grade students the opportunity to take Algebra I, without depriving them of their other required courses or opportunities to participate in after-school activities, it was determined that the only option was to offer Algebra I as an additional period before the start of the regular school day.
- Newly hired teachers were required to teach the extra class, while existing staff members were assigned to teach the extra Algebra I class on a voluntary basis.
- Knowing that the additional class period was beyond the parameters of the CNA, the Board offered to meet with the Association to discuss the impact of the additional class period and compensation for teachers assigned to teach it.
- During successor contract negotiations, in its Fact-Finding proposal the Board proposed an annual stipend of \$4,500 for any teacher assigned to teach the additional class period.
- The additional class period for eighth grade students to take Algebra I before the regular school day has been in place since the start of the 2013-14 school year.

D'Angelo disputes portions of McGeehan's certification.

D'Angelo certifies that the Algebra I teachers could also teach after school, and that there is no proof that the students could

not complete all other course work if they took algebra during the school day. D'Angelo certifies that the Association was always available to bargain over the terms and conditions of the math teachers certified to teach the Algebra I classes as long as the classes occurred during the contractually mandated school hours. D'Angelo certifies that the Board unilaterally implemented the additional class period, and unilaterally set a salary for the teachers of the new Algebra I class.

On September 13, 2013, the Association filed a grievance asserting that the Board violated Section 5:4.1 of the CNA by implementing the Algebra I class outside of the teachers' contractual workday. The Association sought the following relief:

Cancel classes. Using the teacher's annual salary, compensate any teacher that worked with two hours pay for each day they taught that class.

On October 21, 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].

The Board asserts that the change in work day to accommodate an educational policy decision is non-negotiable. Citing Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992) and Morris Hills Reg. Bd. of Ed., P.E.R.C. No. 2012-12, 38 NJPER 154 (¶43 2011), the Board contends that the Commission has held that a school board has the prerogative to modify the work hours of

some staff members in order to implement educational policy by providing services to students when it deems most appropriate. The Board acknowledges that it must, upon request, negotiate the impact of its decision to change work hours, but argues that it submitted a compensation proposal in the Fact Finding process rather than waiting for a request from the Association to negotiate the impact.

The Association asserts that the Board cannot unilaterally implement its proposed additional class period without negotiating because it has not demonstrated that the Algebra I class could only have been accommodated prior to, rather than during, or after, the regular school day. Citing Harrison Bd. of Ed., I.R. No. 2009-6, 34 NJPER 276 (198 2008), the Association contends that a Commission Designee has found that a board of education commits an unfair practice by unilaterally extending the school day during negotiations for a successor contract. The Association argues that the Hoboken case cited by the Board found that, so long as qualified employees are available to meet the employer's coverage needs, the union has a right to negotiate over who works what hours and how much they are paid for those hours. It asserts that the Board did not negotiate those issues.

The Board responds that the Association refused to negotiate over the additional class period. It asserts that even if the Association could offer its own proposal on how to add Algebra I

to the regular school day without displacing other required courses, it is the Board who has the knowledge, expertise, and statutory authority to make such educational policy decisions. Finally, the Board argues that the dispute over appropriate compensation for the extra class cannot be submitted to an arbitrator because the issue should be resolved as part of their collective negotiations.

When resolving negotiability disputes we base our rulings on the particular context of each case rather than rely on labels. See Troy v. Rutgers, 168 N.J. 354, 383 (2000).

We hold that, on balance, the Board's decision to add additional Algebra I classes and schedule them prior to the start of the normal school day is an educational policy decision that is neither negotiable nor arbitrable.

Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973) holds that, while school employers are not obligated to negotiate over school calendar decisions, such choices do not necessarily preclude negotiations over the work day and work load for faculty. In many cases, alterations or extensions of employee work days are mandatorily negotiable, especially where no significant governmental or educational policy decision prompted the change. See Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) (no significant educational purpose behind

extension of last work day before a holiday); Passaic Bd. of Ed., P.E.R.C. No. 2001-54, 27 NJPER 182 (¶32059 2001) (extension of six half-day work days mandatorily negotiable).

However, when the change is motivated by a significant educational purpose, the balance falls on the employer's side and the decision cannot be negotiated or challenged through binding arbitration. See Hoboken Bd. of Ed., P.E.R.C. No. 93-15, supra. (Given circumstances, Board had a prerogative to change guidance counselor hours to facilitate meetings with students as well as change hours of operation of library and Teach Center despite effect on work hours of assigned staff); State of New Jersey (Rowan Univ.), P.E.R.C. No. 99-26, 24 NJPER 483 (¶29224 1998), aff'd 26 NJPER 30 (¶31009 App. Div. 1999) (given University's prerogative to schedule classes on holidays, work schedule changes necessary to accommodate presence of students were non-negotiable).

But, as the Board concedes, the dispute over compensation for employees who teach the extra Algebra I classes is mandatorily negotiable and may be resolved through binding grievance arbitration. Hoboken, supra., permitted arbitration of the severable claims for compensation.^{1/}

^{1/} The Board argues that the compensation issue should be resolved through collective negotiations process. While we do not disagree with that suggestion, that is not a legal ground to hold that the issue cannot be arbitrated.

ORDER

The request of the Bayonne Board of Education for a restraint of binding arbitration is granted to the extent the grievance challenges its decision to add additional classes of Algebra I and schedule them prior to the existing start of the teacher work day. The request is otherwise denied.

BY ORDER OF THE COMMISSION

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

ISSUED: October 30, 2014

Trenton, New Jersey