

P.E.R.C. NO. 2015-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET HILLS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-065

SOMERSET HILLS EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Somerset Hills Board of Education for a restraint of binding arbitration of a grievance filed by the Somerset Hills Education Association. The grievance asserts that the Board's new lesson plan and evaluation initiatives violated the collective negotiations agreement by increasing teacher workload without additional compensation. The Commission finds that compensation for alleged workload increases is a mandatorily negotiable subject.

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, Adams Gutierrez & Lattiboudere,
LLC, attorneys (Derlys M. Gutierrez, of counsel)

For the Respondent, Bergman & Barrett, attorneys
(Michael T. Barrett, of counsel)

DECISION

On February 26, 2014, the Somerset Hills Board of Education filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Somerset Hills Education Association. The grievance asserts that the Board has implemented new lesson plan initiatives and other teaching objectives that substantially increased workload beyond their contractual time without compensation for the additional work.

The Board has filed briefs, exhibits, and the certifications of Superintendent Dr. Frances Wood and Director of Curriculum and Instruction Jennifer Shouffler. The Association has filed a brief, exhibits, and the certification of Association President Joseph Foglia. These facts appear.

The Association represents a negotiations unit of certified personnel including teachers, teaching specialists, nurses, guidance counselors, and media specialists, as well as non-certified personnel including support, custodial, technology, and co-curricular staff. The Board and Association are parties to a CNA effective from July 1, 2011 through June 30, 2014. The grievance procedure ends in binding arbitration.

Article X of the CNA is entitled "Certified Personnel Rights." Article X, Paragraph A. is entitled "Teacher Workload." Article X, Paragraph A., Section 2. is entitled "Workday" and Subsection 2.a. provides:

The teachers shall not be required to be present in school more than seven (7) hours and sixteen (16) minutes in a normal workday without additional monetary or time compensation.

Article X, Paragraph A., Subsection 2.b. provides:

The required teacher workday shall not be more than five and one-half (5.5) hours of academic teaching. The teacher shall not be required to spend more than three and one-half (3.5) hours of pupil contact time continuously.

Article X, Paragraph A., Subsections 2.c. and 2.e. define pupil contact time and non-pupil contact time, and provide for a daily individual teacher preparation time, team planning period, and duty-free lunch period.

Dr. Wood certifies that the initiatives being grieved by the Association do not require any additional work by the teachers.

He certifies that when he became superintendent on July 1, 2013, he initiated a policy whereby administrators read teachers' lesson plans on a weekly basis and provide feedback. Previously, lesson plans were only periodically reviewed, typically in connection with a teacher observation. He certifies that the criteria for lesson plans have not changed.

Ms. Shouffler certifies that the initiatives grieved by the Association are required by TEACH NJ, P.L. 2012 c. 26. She certifies that the Board selected the "Danielson" teacher evaluation model. She certifies that Domain 4 of the Danielson model does not impose additional requirements on teachers. She certifies that Professional Learning Communities (PLC's) are a method for teachers to discuss education topics and that participation is voluntary and fulfills Domain 4 of the teacher evaluation model. She certifies that the Board has set aside PLC time during after school meetings and Professional Learning Days.

Mr. Foglia certifies that the Board's implementation of new evaluation policies has significantly impacted teacher workloads far beyond the contractual work time. He certifies that the new initiative regarding weekly lesson plan feedback and revisions has resulted in a substantial increase in lesson planning time which has caused some teachers to work 10-15 additional weekend hours. He certifies that the implementation of SGO's substantially increases teacher workloads due to time consuming

data collection and synthesis, and that participation in PLC's and fulfillment of Danielson model obligations require additional teacher time because they mandate what had been voluntary.

On December 18, 2013, the Association filed a grievance asserting that the Board violated the CNA by increasing teacher workloads through implementation of the following initiatives: 1. Intensified written lesson plans; 2. SGO's; 3. PLC's; and 4. Danielson Model especially Domain 4. As relief, the Association seeks that the Board negotiate compensation for the extra work. After the grievance was denied, the Association demanded binding arbitration. This petition ensued.

The Commission's inquiry on a scope of negotiations petition is quite narrow. We are addressing a single issue in the abstract: whether the subject matter in dispute is within the scope of collective negotiations. The merits of the union's claimed violation of the agreement, as well as the employer's contractual defenses, are not in issue, because those are matters for the arbitrator to decide if the Commission determines that the question is one that may be arbitrated. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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 weekly review of teachers' lesson plans is a non-negotiable managerial prerogative that concerns educational policy and has no impact on teachers' workload or job responsibilities. It argues that requirements concerning SGO's, PLC's, and the Danielson model for teacher evaluations are non-negotiable both because they are preempted by law and because they concern educational policy. The Board notes that N.J.A.C. 6A:10-4.2(e)(3) provides that all teachers shall develop SGO's, and that the Danielson model is a State Department of Education approved teaching practice evaluation instrument that meets specific criteria under N.J.A.C. 6A:10-6.2. It contends that the substantive aspects of teacher evaluation are non-negotiable because they involve sensitive educational policy decisions. It asserts that it has not required teachers to perform extra work beyond the contractual work day in order to comply with the TEACH

NJ initiatives, and that it has provided teachers with additional time to develop SGO's and work with PLC's.

The Association asserts that its grievance does not challenge the right or obligation of the Board to implement teacher evaluation requirements, but challenges only the mandatorily negotiable impact of the new requirements in the form of increased, uncompensated workload beyond the time set by the CNA. It argues that TEACH NJ and its enabling regulations do not preempt arbitration of alleged violations of a contract clause providing for compensation for increased workload.

Teacher evaluation criteria are not mandatorily negotiable. Bethlehem, supra. Furthermore, the development, substance, and format of teacher lesson plans and the method of their preparation and submission, are not mandatorily negotiable matters. See Paterson Bd. of Ed., P.E.R.C. No. 92-118, 18 NJPER 303 (¶23130 1992) and cases cited therein. However, the Association does not dispute the Board's educational policy decision to implement the Danielson model, lesson plan requirements, or other evaluation tools. It is apparent that the gravamen of this dispute is a claim for extra compensation for an alleged increase in teacher workload resulting from the Board's implementation of a new teacher evaluation model.

Initially, we reject the Board's argument that N.J.A.C. 6A:10-4.2(e)(3) and 6A:10-6.2 preempt arbitration of this

dispute. Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The education regulations cited by the Board regarding the development of student growth objectives and teacher evaluation and observation methods are silent on the issues of workload impact and resulting claims for compensation based on implementation of a Board's SGO and evaluation models.^{1/}

Numerous Commission and court decisions stand for the general principal that teacher workload is mandatorily negotiable. See, e.g., In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26 (App. Div. 1977); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd NJPER Supp. 2d 258 (¶214 App. Div. 1991); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd NJPER Supp.2d 112 (¶92 App. Div. 1982); and Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980).

^{1/} Furthermore, even if some sections of Title 6A., Chapter 10. "Educator Effectiveness" were preemptive of otherwise mandatorily negotiable issues, N.J.A.C. 6A:10-1.3 specifically states that: "The rules in this chapter shall not override any conflicting provision(s) of collective bargaining agreements or other employment contracts entered into by a school district in effect on July 1, 2013." Accordingly, as the CNA here has been in effect since July 1, 2011, the Chapter 10. regulations cited by the Board could not preempt any allegedly conflicting contract terms.

Commission and court cases uniformly hold that grievances seeking compensation for alleged violations of teacher workload agreements or practices are legally arbitrable. See Franklin Tp. Bd. of Ed. and Franklin Tp. Ed. Ass'n, P.E.R.C. No. 2003-58, 29 NJPER 97 (¶27 2003), aff'd 30 NJPER 201 (¶75 App. Div. 2004), certif. den. 181 N.J. 547 (2004); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd NJPER Supp. 2d 225 (¶196 App. Div. 1990); Montville Tp. Bd. of Ed. and Montville Tp. Ed. Ass'n, P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd NJPER Supp.2d 170 (¶150 App. Div. 1987), certif. denied 108 N.J. 208 (1987); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd NJPER Supp. 2d 160 (¶141 App. Div. 1986); and Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976). We have consistently applied the wealth of judicial guidance on these issues to find that, where workload increases or adjustments were compelled by major educational policy determinations, claims for compensation are arbitrable but claims for rescission of workload increases are not. See, e.g., Northern Burlington County Reg. Bd. of Ed., P.E.R.C. No. 2013-53, 39 NJPER 303 (¶103 2013); Egg Harbor Tp. Bd. of Ed., P.E.R.C. No. 2011-45, 36 NJPER 456 (¶176 2010); Watchung Hills Reg. Bd. of Ed., P.E.R.C. No. 2007-39, 32 NJPER 399 (¶165 2006); Millville Bd. of Ed., P.E.R.C. No. 2005-13, 30 NJPER 354 (¶115 2004); Penns Grove-Carneys Point Reg. Bd. of Ed.,

P.E.R.C. No. 2003-93, 29 NJPER 287 (¶87 2003); Willingboro Bd. of Ed., P.E.R.C. No. 98-11, 23 NJPER 471 (¶28220 1997); Willingboro Bd. of Ed., P.E.R.C. No. 97-78, 23 NJPER 36 (¶28025 1996); Glen Ridge Bd. of Ed., P.E.R.C. No. 95-87, 21 NJPER 178 (¶26113 1995); Perth Amboy Bd. of Ed., P.E.R.C. No. 94-123, 20 NJPER 285 (¶25145 1994); Neptune Tp. Bd. of Ed., P.E.R.C. No. 90-12, 15 NJPER 511 (¶20212 1989); and Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987).

In Linden Bd. of Ed. and Linden Ed. Ass'n, P.E.R.C. No. 80-47, 5 NJPER 483 (¶10244 1979), aff'd NJPER Supp.2d 83 (¶64 App. Div. 1980), the school board instituted supplements to its curriculum that required additional recordkeeping by teachers in order to monitor basic skills of grammar school students. In affirming our decision to allow arbitration of the union's claim for compensation based on alleged increased workload, the Appellate Division found:

For the 1971-72 school year, the Board adopted the "Fountain Valley Program" which amounted to a pre-set curriculum designed to monitor the basic skills of grammar school students. The program has been in effect since that time. During the 1976-1977 school year, the Board appointed a Director of Elementary Education who modified the administration of the program in a manner which required additional record-keeping by the teachers. The Association does not challenge the Board's right to implement the curriculum but argues that the modifications made in the 1976-77 school year resulted in a unilateral change in teacher workload. The change in workload was a result of added

record-keeping requirements and/or additional pupil contact and preparation time....

We agree with PERC's determination that the changes made in 1976-77 in the administration of the Fountain Valley Program resulting in increased workload for the teachers is an arbitrable grievance and within the scope of negotiations....

Here, the Association is clearly not disputing the Board's prerogative to implement the Fountain Valley Program. The defendants merely argue that because the program was modified, it increases their workload and such a change must, therefore, be negotiated. Case authority is uniformly in agreement with the Association's position. In re Byram Township Board of Education, 152 N.J. Super. 12, 26 (App. Div. 1977); Bd. of Ed. Englewood, above, 64 N.J. at 6-7....Our courts have thus consistently held that a change in the length of a teacher's work day which is an obvious corollary of an increased workload is mandatorily negotiable. In re Maywood Board of Education, 168 N.J. Super. 45, 59 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); In re Galloway Township Board of Education, 157 N.J. Super. 74, 80 (App. Div. 1978). The fact that a change in workload may be caused by a change in educational policy, which is concededly a Board prerogative, does not alter its negotiable or arbitrable nature. Bd. of Ed. W'dst'n.-Pilesgr., above, 81 N.J. at 594. [NJPER Supp.2d at 83-84]

More recently, in Egg Harbor Tp. Bd. of Ed., supra, we specifically dealt with the school board's implementation of one of the same types of programs at issue here - Professional Learning Communities (PLC's). Finding that the school board's educational policy prerogative to implement the PLC program was not at issue in the arbitration because the Association's demand for arbitration was limited to compensation for allegedly lost unassigned time, the Commission found that the grievance

concerned a mandatorily negotiable issue and therefore declined to restrain binding arbitration. Id.; see also, Millville, supra, (implementation of "Academy Success and Pride Program" increased lesson planning and grading responsibilities beyond original "Activities Period" it replaced).

Accordingly, because the Association's grievance is limited to compensation for alleged increases in workload resulting from new evaluation and lesson plan methods, it does not significantly interfere with an educational policy determination and is therefore mandatorily negotiable and legally arbitrable. Whether the parties' CNA requires additional compensation for increased workload and whether, in fact, these teachers had their workload increased beyond contractual limits are issues of contract interpretation and fact reserved to an arbitrator.

ORDER

The request of the Somerset Hills Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 20, 2014

Trenton, New Jersey