

P.E.R.C. NO. 2015-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERLIN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-101

BERLIN TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Berlin Township Board of Education for a restraint of binding arbitration of a grievance filed by the Berlin Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when a principal assigned teachers to supervise their students' lunch period on early dismissal days. The Commission finds that because the parties' negotiated grievance procedure ends in advisory arbitration, and the employer has not made a preemption claim, the grievance may proceed to advisory arbitration.

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, Capehart Scatchard, attorneys  
(Joseph F. Betley, of counsel)

For the Respondent, Selikoff & Cohen, PA, attorneys  
(Keith Waldman, of counsel)

DECISION

On May 9, 2014, the Berlin Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of arbitration of a grievance filed by the Berlin Township Education Association. The grievance alleges the Board violated Article XIV, section F of the parties' collective negotiations agreement (CNA) when a principal assigned grade-level and department teachers to supervise their students' lunch period on early dismissal days.

The parties have filed briefs and exhibits. The Association has filed the certification of Cheryl Hughes, Berlin Township Education Association President. The following facts appear.

The Association represents all certified non-supervisory employees of the Board, including classroom teachers. The parties' collective negotiations agreement has a duration from July 1, 2013 through June 30, 2016. The grievance procedure ends in advisory arbitration.

Article XIV is entitled Work Day, section F provides:

Early Dismissal Work Day for teachers and child study team members is five (5) hours and ten (10) minutes and shall have a minimum of twenty (20) minutes duty free lunch for each teacher Early Dismissal Work Day and twenty (20) minutes duty free time after students are dismissed. However, certain staff members will be required to cover lunch duty. Those unit members will receive a forty (40) minute duty-free lunch after students are dismissed.

Hughes certifies that the parties negotiated section F to delineate exactly which employees would be required to perform lunch duty on early dismissal days - those teachers who perform lunch duty on regular school days. According to Hughes, teachers at the Kennedy Elementary School have covered their students' lunch on early dismissal days, but teachers at Eisenhower Middle School did not. When the principal of Kennedy was transferred to Eisenhower, she sent an email to teachers on October 29, 2013 stating: "on early dismissal days, grade level/department teachers will supervise their respective students during their 20-minute lunch in the cafeteria."

On December 12, 2013, the Association filed a grievance asserting the change violated the CNA and seeking that the Eisenhower teachers be given time equal to that of the alleged contract violation and that schedules for future early dismissal days follow the contract language. The grievance was denied at all steps of the grievance procedure. On March 11, 2014, the Association submitted the grievance to arbitration. This petition ensued.

As noted above, the parties' CNA provides for advisory arbitration. Our Supreme Court has found advisory arbitration to be beneficial to the final decision maker and a possible inducement to avoid further litigation. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 325-326 (1979). Thus, ordinarily we will only consider a petition for a restraint of advisory arbitration based on preemption claims, because an employer cannot act contrary to a statute or regulation. Englewood Cliffs Bd. of Ed., P.E.R.C. No. 82-21, 7 NJPER 507 n. 5 (¶12225 1981); see also Cinnaminson Bd. of Ed., P.E.R.C. No. 2003-44, 28 NJPER 593 (¶33186 2002); Eastampton Bd. of Ed., P.E.R.C. No. 2002-64, 28 NJPER 236 (¶33086 2002); Somerville Bd. of Ed., P.E.R.C. No. 99-66, 22 NJPER 135 (¶27066 1996); Bergen Community College, P.E.R.C. No. 92-27, 17 NJPER 429 (¶22207 1991); South Hackensack Bd. of Ed., P.E.R.C. No. 81-118, 7 NJPER 234 (¶12104 1981), aff'd NJPER Supp.2d 136 (¶118 App. Div. 1983).

The Board is not raising a preemption claim as it asserts that it has a managerial prerogative to assign teachers to supervise the lunch room. Accordingly, we deny the Board's request and the grievance may proceed to advisory arbitration.

ORDER

The request of the Berlin Township Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed.

ISSUED: December 18, 2014

Trenton, New Jersey