P.E.R.C. NO. 2015-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELLEVILLE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2015-012

BELLEVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the Belleville Township Board of Education's request for a restraint of binding arbitration of a grievance filed by the Belleville Education Association. The grievance contests the non-renewal of an assistant baseball coach position. Applying N.J.S.A. 34:13A-23, the Commission finds that the Board's non-renewal decision is arbitrable, but the Commission restrains arbitration to the extent the grievance challenges the Board's decision to eliminate a baseball coach position.

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Appearances:

For the Petitioner, Schwartz Simon Edelstein & Celso, LLC, attorneys (Nicholas Celso, III, of counsel and on the brief; Joshua I. Savitz and Patricia C. Melia, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Samuel B. Wenocur, of counsel)

DECISION

On August 28, 2014, the Belleville Township Board of Education filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of a grievance filed by the Belleville Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it did not renew a teacher's position as assistant baseball coach for the 2014 season. We restrain arbitration in part, and deny restraint of arbitration in part.

The Board has filed briefs, exhibits, and the certifications of Thomas D'Elia, Director of Physical Education, Health and Athletics K-12 ("Athletic Director"), and of Sandra Gerst,

Assistant to the Athletic Director. The Association has filed a brief and the certification of the Grievant. These facts appear.

The Association represents a negotiations unit of certified teaching personnel and other non-supervisory employees including counselors, nurses, secretaries and clerks, and other specified titles. The Board and Association are parties to a CNA effective from July 1, 2012 through June 30, 2015. The grievance procedure ends in binding arbitration.

The Grievant has been a teacher in the Belleville School District since 2000, and a stipended baseball coach for Belleville High School for approximately thirteen years. Prior to the 2013-14 school year, the Board regularly hired three high school baseball coaches: one each for the varsity, junior varsity (JV), and freshmen teams. The varsity coach held the job title of head baseball coach, while the JV and freshmen coaches held the job title of assistant baseball coach. In November 2013, the Board eliminated one assistant coach for all winter and spring sports programs, including baseball, due to budgetary constraints.[1/] The Board decided that freshmen teams would practice with the JV and varsity teams, play abbreviated schedules, and be coached by the JV or varsity coach.

1/ D'Elia certifies that the budget shortfall was caused by an additional $14,643.62 expense caused by its settlement of an Association grievance filed in 2013 by the Grievant (as Association President) on behalf of four football coaches who had been asked to split two assistant coach stipends.

In December 2013, the Grievant wrote to Athletic Director D'Elia expressing his interest in serving as a baseball coach again for the 2014 season. D'Elia rehired the previous year's head (varsity) baseball coach, and informed the Grievant that there would only be one assistant baseball coach hired rather than two as in previous years. The Board received three applications for the assistant baseball coach, including the Grievant's. The Grievant and D'Elia scheduled an interview for the coaching position which was re-scheduled multiple times in January 2014. The parties' certifications disagree as to which party was responsible for cancelled interviews, but D'Elia certified that he ultimately "was unable to accommodate" the Grievant's final available interview dates because his recommendation for the assistant baseball coach position was due that Friday (January 24, 2014) to be considered by the Board at its Monday meeting. The Board re-hired the assistant baseball coach who had coached the JV team the previous year.

The Grievant certifies that, as a result of decreasing the number of baseball coaches to two, the duties and hours of the remaining coaches increased drastically, the coaches now had to combine three teams for practice, and multiple baseball games during the Spring 2014 season had to be cancelled because there were not enough coaches to coach different teams at once. He certifies that due to the elimination of the third baseball

coach, the Board hired paid non-unit baseball team "site managers" for the first time. He certifies that the site managers assumed the duty of giving payment vouchers to umpires, which the baseball coaches had previously been responsible for.

D'Elia's supplemental certification states that site managers, who are paid a flat fee per game depending on the sport, had been used for other high school sports since the 2012-13 school year. He certifies that the site manager job description (Board Exhibit O) includes preparing payroll forms for all athletic event workers, and that site managers usually do not interact with the teams or athletes. D'Elia certifies that the head coach and assistant coach job descriptions do not include providing payment vouchers to game officials (Board Exhibits C and D), and that coaches are only responsible for submitting expense vouchers when a site manager is not present.

Board Exhibits P, Q, and R are memoranda from D'Elia to all spring head coaches dated February 9, 2012, February 20, 2013, and March 4, 2014 respectively, which each stated the following regarding expense voucher responsibilities: "Expense vouchers - Coaches responsibility, unless site manager is present."

On February 7, 2014, the Association filed a Level 1 grievance asserting that the Board improperly failed to reassign the Grievant to the assistant baseball coach position because it was targeting him for being President of the Association. As a

remedy, the grievance seeks that the Grievant be hired to the assistant baseball coach position. On February 13, the Association filed a Level 2 grievance asserting that the decision not to rehire the Grievant changed working conditions for the remaining two coaches who had to coach more players and three different competition levels. The grievance sought the following remedy:

> The BOE hires a coach for every competitive level - freshman, junior varsity and varsity.

On February 19, D'Elia denied the grievance, stating that the Grievant was afforded the same opportunities as the other two candidates for the position. On March 3, 2014, the Association demanded binding grievance arbitration, asserting:

> The Belleville Board of Education violated contract language, administrative code and any other relevant article, statute or board policy when it failed to adequately staff coaching 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]

Effective January 4, 1990, the Legislature amended the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., to expressly permit a school district to agree to arbitrate disputes over the non-retention of an employee in an extracurricular position. This statutory amendment, N.J.S.A. 34:13A-23, provides, in pertinent part:

> **34:13A-23. Assignment to extracurricular activities; subject to collective negotiations**
>
> All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations.

Since the enactment of N.J.S.A. 34:13A-23, the Commission has regularly held that a school board's hiring decisions for coaches and other extracurricular positions are legally arbitrable. See, e.g., Union Cty Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 98-98, 24 NJPER 119 (¶29060 1998)(Board's decision to replace baseball coach with a different person was arbitrable); Middletown, supra (Board's decision to replace basketball coach due to alleged improper behavior during games was arbitrable); Florham Park, supra (Board's decision to replace soccer coach due to the teacher's alleged inappropriate in-class behavior was arbitrable); Cinnaminson, supra (Board's decision to replace basketball coach was arbitrable); and Holmdel, supra (Board's decision not to rehire teacher to either baseball or basketball coaching position was arbitrable).

In Jackson Twp. Bd. of Educ. v. Jackson Educ. Ass'n, 334 N.J. Super. 162 (App. Div.), certif. denied, 165 N.J. 678 (2000), the Appellate Division upheld the Commission's statutory

interpretation. The Court affirmed a Commission decision (P.E.R.C. No. 99-62, 25 NJPER 87 (¶30037 1999)) to allow arbitration of the non-renewal of a teacher's position as high school golf coach. Noting that prior to 1990, the established rule was that removals from extracurricular positions in public schools were not arbitrable, the Jackson Court found:

> It is undisputed that N.J.S.A. 34:13A-23 changed that rule, classifying issues bearing upon extracurricular assignments as mandatorily negotiable....It is also undisputed that this provision encompassed non-renewals of extracurricular assignments, and that PERC has uniformly held it to allow parties to agree to arbitrate such controversies....N.J.S.A. 34:13A-23 operates only after the board has made a decision not to renew. The statute authorizes parties to have agreed on a neutral forum - here, arbitration - for resolving disputes over whether the local decision-maker violated any law or contractual obligation in determining not to renew a teacher's extracurricular assignment....N.J.S.A. 34:13A-23, by its terms, specifically governs the present dispute; it expressly applies to non-renewals of extracurricular assignments, declaring that "[a]ll aspects" of such assignments are mandatorily negotiable (except for the qualifications of the positions). [Id. at 169, 172]

Applying N.J.S.A. 34:13A-23, and the Commission and court precedent interpreting it, to the instant case, we find that the Board's decision to rehire a different baseball coach rather than the Grievant to the one remaining assistant baseball coach position for which he applied is legally arbitrable.

However, N.J.S.A. 34:13A-23 is not applicable to the Board's decision to eliminate a baseball coach position, and therefore the Association may not arbitrate the Board's decision to not reappoint the Grievant to a third baseball coach position which no longer exists. In Manchester Tp. Bd. of Ed., P.E.R.C. No. 94-22, 19 NJPER 457 (¶24216 1993), the Commission specifically considered the interplay of N.J.S.A. 34:13A-23 and a school board's managerial prerogative to reorganize its athletic department in such a way that three extracurricular positions were eliminated in favor of one full-time position. Where the grievant teacher in that case had not applied to the newly created athletic director position that remained, we found that the issue of his non-retention in any of the three abolished positions was not arbitrable, stating:

> ...[W]e do not read this section to have negated a school board's ability to reorganize its educational program by creating a full-time job and rearranging the duties of supervisory jobs in the manner it did here. This dispute centers on that reorganization, not on the non-retention of a teaching staff member in an extracurricular position that continues to exist.

See also Fair Lawn Bd. of Ed., P.E.R.C. No. 2012-58, 38 NJPER 361 (¶123 2012)(Board had prerogative to determine that one coach could coach both the boys's and girls' bowling teams after the second bowling coach position was eliminated). As in Manchester and Fair Lawn, the Board's decision to reduce a budget shortfall

through the elimination of a baseball coach position is not mandatorily negotiable. An arbitrator may not second-guess the Board's action and require reinstatement of the coach position.

The Association asserts that eliminating the third baseball coach position and using site managers for baseball games is legally arbitrable because it transferred unit work to non-unit employees without negotiations in violation of the unit work rule. However, we find that exceptions to the unit work rule apply because the work has not historically been only been performed by the coaches, and because the Board has reorganized the way it delivers government services. City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998). First, the facts show that providing payment vouchers to umpires was not exclusively the province of the coaches. That duty was included in the site manager job description, and was only included in the spring coach job description as something to be done when a site manager was not present. The use of part-time site managers for such administrative tasks surrounding athletic events did not effectively replace coaches, as even the Association concedes there were not enough coaches for all three teams to schedule games simultaneously, and the remaining two coaches allegedly had workload increases due to the elimination of a coach.

Furthermore, the Board has reorganized the way it delivers services in its athletic department, because in 2012-13 it began

using site managers for many sports, and in 2013 it eliminated the freshmen coaches in all winter and spring sports programs. Where an employer has exercised its managerial right to reorganize the way it delivers government services it may, by necessity, be able to transfer job duties to non-unit employees without incurring a negotiations obligation. See, e.g., Manchester, supra; Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985)(employer consolidating police and fire dispatching functions had managerial prerogative to employ civilian dispatchers); Freehold Reg. H.S. Bd. of Ed, P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) (board had prerogative to reorganize supervisory structure for custodians with consequence that some unit work was shifted outside negotiations unit).

Accordingly, as the unit work rule is inapplicable to the facts of this case, we reiterate that it is the Board's non-negotiable managerial prerogative as part of its reorganization of services to make the staffing determination that two coaches can perform the coaching duties for three baseball teams.

Finally, pursuant to N.J.S.A. 34:13A-23, in addition to assignment, dismissal, and retention disputes, "any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations," so the Association's allegations of increased workload for the remaining two baseball coaches are legally arbitrable. See, e.g.,

Fair Lawn, supra (after bowling coach position was eliminated, remaining bowling coach's increased workload claim was arbitrable); Wood-Ridge Bd. of Ed., P.E.R.C. No. 94-101, 20 NJPER 200 (¶25095 1994)(Board's right to schedule extra weightlifting session was not negotiable, but issue of weightlifting coach's alleged extra hours without pay was arbitrable).

ORDER

The request of the Belleville Township Board of Education for a restraint of binding arbitration is granted to the extent the grievance challenges the Board's decision to eliminate a baseball coach position. The request is denied to the extent the grievance challenges the Board's decision not to assign the Grievant to the remaining assistant baseball coach position, and to the extent it challenges the workload or compensation of the two remaining baseball coaches.

BY ORDER OF THE COMMISSION

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

ISSUED: May 21, 2015

Trenton, New Jersey