

P.E.R.C. NO. 2017-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOROUGH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-025

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Board of Education for a restraint of binding arbitration of two grievances seeking additional compensation due to the assignment of daily homeroom duty to middle school teachers and the assignment of "posts" to them as well as teachers at one of the district's elementary schools. The Commission holds that an arbitrator may determine whether the assignment exceeded contractual workload limits and finds that the other issues raised by the Board are not within the Commission's jurisdiction in a scope of negotiations proceeding.

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, Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLC, attorneys (Anthony P. Sciarrillo, on the brief; Stephen J. Christiano, on the brief)

For the Respondent, Detzky, Hunter & DeFillippo, LLC, attorneys (David J. DeFillippo, of counsel and on the brief)

DECISION

On January 17, 2017, the Middlesex Borough Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of two grievances filed by the Middlesex Education Association (Association). The grievances allege that the Board violated the parties' collective negotiations agreement (CNA) by assigning middle school teachers a daily homeroom duty for the 2015-2016 school year and by assigning middle school teachers and Parker Elementary School teachers "posts" in addition to their weekly duties that same school year.

The Board filed a brief, exhibits and the certification of its Superintendent, Dr. Linda A. Madison. The Association filed a brief and the certification of Brian R. Furry, UniServ Field Representative for the New Jersey Education Association. These facts appear.

The Association represents all full-time and part-time certified personnel and all non-certified personnel (with the exception of those in approximately 15 titles). The Board and Association are parties to a CNA in effect from July 1, 2014 through June 30, 2017. The grievance procedure ends in binding arbitration for "grievances concerning the interpretation, application, or alleged violation of the written Agreement."

The subject grievances were filed on April 29, 2016 at "Level 2" and set forth a provision of the CNA stating: "Preschool to Grade 5 teachers and Grade 6-12 teachers who teach six (6) periods per day will be assigned no more than two (2) duties per week." Both grievances seek as a remedy the revision of the affected teachers' schedules so as to comply with the CNA and additional compensation for time worked beyond the contractual requirement.

On May 10, 2016, Dr. Madison, then in her fourth year as superintendent, denied the grievances. With respect to the homeroom duty grievance, the Superintendent advised the Association President in pertinent part as follows:

[I]t is my position, after reviewing the schedules from the past years, that this has been an ongoing and past practice for some time. It has been an acceptable and ongoing practice for the teachers, during the homeroom period immediately prior to the first period class, to take the daily attendance, facilitate the Pledge of Allegiance to the flag of the United States, and facilitate the morning announcements and then begin instruction. There has also been a past practice of assigning a duty as a full period that has been in place consistently. The homeroom period does not meet that standard.

The Superintendent also maintained that the grievance was untimely, not having been filed within the contractual time limit set forth in the grievance procedure, that it was procedurally defective, not having been filed at the first step as required by the grievance procedure, and that it had been abandoned. As to the latter claim, the Superintendent noted that an identical grievance had been filed by the Association at "Level 2" on December 4, 2015 and that following its denial, the Association did not seek to advance the grievance to the next level or take any further action relative to it.

The Superintendent denied the "posts" grievance, stating that it, too, was untimely and that "this has been an ongoing and past practice for some time." The Board denied the subject grievances on July 12, 2016.

The Association demanded arbitration of the grievances. An arbitrator was appointed. The arbitrator denied the Board's

request to adjourn the hearing, which was scheduled for February 1, 2017.^{1/}

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

^{1/} We have not been advised whether the arbitrator has rendered a decision.

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 abstract issue before us is whether compensation for the performance of additional duties beyond any contractual limits is mandatorily negotiable. On the record before us, we find that it is. We have held that grievances seeking additional compensation for alleged violations of teaching load agreements are legally arbitrable. See, e.g., 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); 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); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984). We have been presented no information that convinces us to depart from that view.

The Board does not contend that its decisions were based on educational policies.^{2/} Its arguments that the grievances are untimely and not in conformance with the negotiated grievance procedure and/or abandoned, and that a past practice or other contract language permits the assignment of the disputed duties,

^{2/} Accordingly, we do not reach any issue as to the remedies available if the grievances are not denied.

all raise defenses outside of our scope of negotiations jurisdiction. Ridgefield Park. We assume that the Board presented these arguments to the arbitrator and that the arbitrator considered them.

ORDER

The Middlesex Borough Board of Education's request for a restraint of binding 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. Commissioner Wall was not present.

ISSUED: April 27, 2017

Trenton, New Jersey