P.E.R.C. NO. 2020-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONROE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2020-010

MONROE TOWNSHIP ADMINISTRATORS & SUPERVISORS ORGANIZATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, the request of the Monroe Township Board of Education for a restraint of binding arbitration of two grievances filed by the Monroe Township Organization of Administrators and Supervisors addressing numerous issues, including: a decision to assign PowerSchool scheduling responsibilities to an assistant principal (granted) and a claim that the employee's workload increased as a result of that decision (denied); decisions not to staff an assistant principal position and to leave other positions unfilled (granted); a claim accusing the Board of a lack of clear and effective communication and untimely processing of purchase orders (granted); claims relating to whether just cause existed for the imposition of disciplinary penalties against unit members for attendance policy violations (denied); the Board's alleged promotion or encouragement of unprofessional and inappropriate conversations in meetings (denied); claims the Board failed to support members who were alleged victims of intimidation and harassment by members of the public (denied); and claims the Board violated its healthy workplace policy through subjecting the Association's president to an unhealthy, harassing workplace environment (denied).

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 (Robert A. Muccilli, of counsel and on the brief)

For the Respondent, New Jersey Principals and Supervisors Association (Carol R. Smeltzer, of counsel and on the brief)

DECISION

On August 23, 2019 the Monroe Township Board of Education (Board) filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of two grievances filed by the Monroe Township Organization of Administrators and Supervisors (MTOAS).[1/]

1/ The Board's scope petition, as filed, also sought to restrain arbitration of a third grievance, dated May 14, 2019. On April 29, 2020, the parties advised the Commission that the MTOAS had withdrawn the May 14 grievance, with prejudice.

The Board filed briefs and exhibits.[2/] The MTOAS filed a brief and the certification of its President, Caroline Yoder, who is also employed as an assistant principal at the high school. These facts appear.

The MTOAS represents a unit of educational administrators and supervisors, including building principals, assistant principals, and departmental supervisors and directors. The Board and the MTOAS were parties to a collective negotiations agreement (CNA) in effect from July 1, 2018 through June 30, 2019. The CNA's grievance procedure, which ends in binding arbitration, allows for grievances to be initiated by any administrator who "feel[s] aggrieved regarding his/her position responsibilities."

The two grievances at issue were filed on April 11, 2019 and May 23, 2019, respectively. The April 11 grievance is detailed in numbered sections labeled "Grievance 1" through "Grievance 5," each addressing distinct claims and supported by facts asserted in separate paragraphs "a" through "z." The May 23 grievance alleges Yoder was subjected to "an unhealthy, harassing workplace environment as a result of many actions" of her superiors in the course of the 2018-2019 school year. Altogether these documents,

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2/ The Board did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts recited in a party's brief be supported by certification(s) based upon personal knowledge.

including subparts, are quite lengthy and detailed and are summarized in pertinent part together with our legal analysis, infra.

The Superintendent denied each of the grievances at level 2 of the CNA's grievance procedure. On July 26, 2019, the MTOAS filed with the Commission a Request for Submission of a Panel of Arbitrators, seeking binding arbitration of the grievances. An arbitrator was assigned on August 22, 2019. 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.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

> [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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The April 11 Grievance

We decline to restrain arbitration of section 1a of the April 11 grievance, which challenges the assignment of district website maintenance duties to principals as being outside their job descriptions. Employees have an interest in not having to perform duties outside their job description, an interest that may be addressed by their majority representative in contract proposals and grievances. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977). See also, State of N.J. (Kean Univ.), P.E.R.C. No. 2018-51, 44 NJPER 463 (¶129 2018). But a school board has a prerogative to assign clerical or other non-teaching duties that are incidental to a teaching staff

member's primary responsibilities, and non-classroom duties that are related to student safety, security and control. Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987).

Here, the Board has certified no facts showing that the district webmaster's duties fall within the job descriptions of principals, nor do those documents so specify. Nor has the Board certified that website maintenance duties are either incidental to principals' primary responsibilities or related to student safety, security or control. Whereas, an indicator that the duties of the two titles may in fact be distinct is seen in the Board's website policy, which requires a webmaster to handle website maintenance, while specifying that principals and department supervisors are only responsible for reviewing and approving website content. Finally, the Board certified no facts establishing that its decision about website maintenance duties had anything to do with a departmental reorganization or the merging of the duties of one title with another. Manchester Tp. Bd. of Ed., P.E.R.C. No. 94-22, 19 NJPER 457 (¶24216 1993).

We restrain arbitration of that part of section 1b of the April 11 grievance challenging to a decision to assign PowerSchool scheduling responsibilities to a middle school assistant principal as being outside that title's job description. Principals and assistant principals have "broad responsibility for managing and supervising students."

Middletown Tp. Bd. of Ed., P.E.R.C. No. 92-54, 18 NJPER 32 (¶23010 1991). Consistent with those broad responsibilities, the assistant principal's job description includes a duty to assist "in the preparation of student schedules and master schedule with [the] Principal and Director of Guidance." The Commission has also previously found that duties pertaining to the PowerSchool system predominantly relate to a teaching staff member's job performance. Elizabeth Bd. of Ed., P.E.R.C. No. 2015-55, 41 NJPER 401 (¶125 2015).

However, where such assignments primarily affect the working hours, workload, or compensation of employees, the issue is mandatorily negotiable. Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983), citing, inter alia, Byram, supra. Here, a portion of section 1b of the grievance claims that an assistant principal's workload was increased as a result of a decision to make that individual solely responsible for the creation, maintenance and oversight of the middle school's Main PowerSchool Schedule, a task previously accomplished by a "team of individuals" overseen by the assistant principal. The grievance contends this caused an increase in workload "beyond what can be accomplished by one person," and prevented the assistant principal from completing his or her other responsibilities. We find that an arbitrator may evaluate the merits of this claim with respect to section 1b of the April 11 grievance, as well as

the Board's defenses, including that work hours did not increase nor were employees asked to work additional time.

We restrain arbitration of section 1c of the April 11 grievance, which challenges a decision not to staff an assistant principal position at the high school, and demands that the vacant position be filled temporarily with a certified administrator. The Board's determination of staffing levels, including a decision not to fill a vacancy, is not mandatorily negotiable. Trenton Bd. of Ed., P.E.R.C. No. 2018-16, 44 NJPER 171 (¶51 2017); Brookdale Comm. College, P.E.R.C. No. 2017-68, 43 NJPER 450 (¶127 2017); Newark State-Operated School Dist., P.E.R.C. No. 2001-10, 26 NJPER 368 (¶31149 2000), aff'd in pt., rev'd in pt. on other grounds, 28 NJPER 154 (¶33054 App. Div. 2001); North Bergen Bd. of Ed., P.E.R.C. No. 82-126, 8 NJPER 397 (¶13181 1982).

We restrain arbitration of sections 2d through 2j of the April 11 grievance. These sections accuse the Board of an "overall lack of clear and effective communication . . . between the MTOAS and Central Administration," and claim the Board violated district policies[3/] by: repeated cancellations or scheduling of meetings without adequate notice or coverage;

3/ Specifically, policies addressing job descriptions, educational program evaluation, a comprehensive equity plan, the management team, district organization, a healthy workplace, and budget preparation.

proposed departmentalization of grades 3 and 4 without prior meetings with the MTOAS; unclear delineation of the assistant superintendents' job responsibilities; inconsistent adherence to the district chain of command; inclusion of a new reading program in the 2019-2020 budget without input from the curriculum department or principals and without a formal adoption procedure or needs assessment; placement of staff without notifying principals; and the allocation of resources without input from the MTOAS. The grievance demands remediation of these concerns through a plan to be created in a meeting with MTOAS leadership.

In its brief the MTOAS concedes the Board's authority to decide these matters, but merely seeks a "seat at the table," contending that committees having only advisory authority on nonnegotiable issues are mandatorily negotiable. But the MTOAS neither cites any provision of the CNA nor certifies to any facts establishing the existence or practices of such advisory committees. We find that arbitration of sections 2d through 2j of the April 11 grievance would significantly interfere with the determination of governmental policy, including decisions involving educational policy under the Board's general and discretionary powers as authorized by N.J.S.A. 18A:11-1(c), and the Superintendent's supervisory powers as authorized by N.J.S.A. 18A:17-20. These claims, while they may present a sincere critique of district operations, do not state changes in or

decisions affecting mandatorily negotiable terms and conditions of employment.

The Board contends that arbitration of sections 3k through 3u of the April 11 grievance,[4/] concerning the application and interpretation of its attendance policy, should be restrained because the Board has a managerial prerogative to: develop and interpret that policy; direct how and when it will be implemented; determine who to consult and what assessments to conduct, if any, prior to making development and implementation decisions; and assign unit members job duties which include implementation of the policy, consistent with their job

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4/ These sections complain of: the Board's improper application and interpretation of its attendance policy during the months of October 2018 through February 2019, including multiple violations of staff Weingarten rights and loss of pay (3k); a lack of communication with MTOAS membership regarding consistent application of the attendance policy (3l); a lack of a district or building level needs assessment for the district's new attendance expectations (3m); uneven policy application (3n); a lack of timely notice and follow up to staff regarding attendance incidents (3o); a failure to seek input from employees' supervisors/principals prior to issuance of "accusatory" attendance citations (3p); arbitrary docking of some employees' pay (3q); a failure to address district employees regarding new attendance expectations (3r); not discussing attendance patterns in administrator meetings with administrators (3s); "potentially violating" privacy rights of staff members by requiring administrators to apply an "undefined interpretation of what constitutes a personal day" (3t); and of statements made to multiple employees that personal days are being granted as a "once in a lifetime event." (3u.) This grievance seeks the removal of all staff letters that "did not originate through the proper channels," the removal of "offensive accusatory wording" on such letters, and payment to staff members who lost pay.

descriptions, as it applies to staff supervised by unit members. The Association responds that this grievance "primarily involves and seeks MTOAS to be included in decisions," a mandatorily negotiable topic.

It is well settled that while the Board has a prerogative to establish attendance and sick leave verification policies, the application of such policies, including issues pertaining to whether just cause existed for the imposition of disciplinary penalties for policy violations, may be challenged through contractual grievance procedures. Burlington Bd. of Ed., P.E.R.C. No. 2019-27, 45 NJPER 242 (¶64 2019), aff'd, 2019 N.J. Super. Unpub. LEXIS 2422 (App. Div. 2019). See also, Cliffside Park Bor., P.E.R.C. No. 2010-61, 36 NJPER 48 (¶22 2010); Piscataway Tp. Bd. of Ed.; Teaneck Twp., P.E.R.C. No. 93-44, 19 NJPER 18 (¶24009 1992). Applying this precedent to the factual allegations in sections 3k through 3u of the April 11 grievance, we decline to restrain arbitration of the following claims and demands for relief regarding the application of the Board's attendance policy: violations of staff Weingarten rights and loss of pay (3k); uneven policy application (3n); lack of timely notice regarding attendance incidents (3o); the issuance of "accusatory" attendance citations (3p); arbitrary docking of some employees' pay (3q); and the demands for the removal of staff letters that "did not originate through the proper channels," the

removal of "offensive accusatory wording" on such letters, and payment to staff members who lost pay.[5/] The Board may address any contractual or other defenses to these claims, including as to their specificity and timeliness and whether the Board followed attendance policy procedures, to an arbitrator.

The Board argues for restraint of arbitration of sections 4w, 4x, 5y and 5z of the April 11 grievance.[6/] These sections respectively grieve: the Board's violation of its healthy workplace policy by leaving key district positions unfilled and without proper coverage (4w), and by a "lack of support" from Central Administration with regard to "harassment and intimidation" of MTOAS members by "community members/parents" (4x); and the Board's violation of its policy which specifies the duties of the School Business Administrator/Board Secretary through untimely processing of purchase orders (5y); and "ineffective communication" with the Business Office. (5z.)

5/ We allow arbitration of the claims in sections 3k, 3n, 3o, 3p and 3q of the April 11 grievance only to the extent they challenge the Board's application of the attendance policy to unit members.

6/ We decline to restrain arbitration of 4v of the April 11 grievance, which concerns the Board's alleged promotion or encouragement of unprofessional and inappropriate conversations at meetings. The Board did not argue in its brief that this subject is outside the scope of collective negotiations, and otherwise offered no factual or legal premise for that outcome.

We restrain arbitration of section 4w of the April 11 grievance because, like 1c and 2d, supra, it challenges the Board's determination of staffing levels, which is not mandatorily negotiable. The MTOAS did not assert any specific facts that would establish an arbitrable claim regarding an increase in workload or hours caused by the staffing level determinations associated with 4w.

We decline to restrain arbitration of section 4x of the April 11 grievance, which alleges the Board failed to support members who were alleged victims of intimidation and harassment by members of the public, in violation of the Board's healthy workplace policy. In Franklin Lakes Bd. of Ed., P.E.R.C. No. 2019-38, 45 NJPER 326 (¶87 2019), we declined to restrain arbitration of a grievance challenging the alleged intimidation of association members by a board member, finding the board's defense that the board member was acting as a parent (i.e., a member of the public) could be made to an arbitrator. Although in Franklin Lakes the association sought to enforce the health and safety provisions of a specific contractual provision, id., N.J.S.A. 34:13A-5.3 provides that public "employees or representatives of employees may appeal [through the negotiated grievance procedure] the interpretation, application or violation of policies . . . affecting them." Here an arbitrator may determine whether the Board's handling of alleged intimidating

and harassing conduct by members of the public toward MTOAS members violated the Board's healthy workplace policy.

We restrain arbitration of sections 5y and 5z of the April 11 grievance, which concern alleged untimely processing of purchase orders and ineffective communication with the Business Office. Like sections 2d through 2j, supra, we find that arbitration these claims would significantly interfere with the determination of governmental policy through the Board's and the Superintendent's general, discretionary and supervisory powers under N.J.S.A. 18A:11-1(c), and N.J.S.A. 18A:17-20. These claims do not state changes in or decisions affecting mandatorily negotiable terms and conditions of employment, or allege any facts that would establish an arbitrable claim, such as an increase in workload or hours.

The May 23 Grievance

We decline to restrain arbitration of the May 23 grievance, which claims the Board violated its healthy workplace policy through subjecting Yoder to "an unhealthy, harassing workplace environment as a result of many actions" of two assistant superintendents and an interim superintendent, including with respect to a referral made by Yoder to the New Jersey Division of Child Protection and Permanency (DCPP)in the 2018-2019 school year, resulting in Yoder fearing "continued targeting" and retaliation "in some manner" from Central Administration. In

Somerset County Sheriff's Office, P.E.R.C. No. 2013-86, 40 NJPER 38 (¶16 2013), we held that a grievance alleging a hostile work environment was legally arbitrable, finding "[t]he issue of whether a hostile work environment existed is not preempted by statute or regulation, does not significantly interfere with governmental policy, and intimately and directly affects the work and welfare of public employees." Id. We find our holding in Somerset County applies with equal force to the May 23 grievance.

Moreover, although the Board has a managerial prerogative to implement a policy requiring that the Superintendent be notified of reports of child abuse and neglect, we do not see, and the Board has not explained, how arbitration of this grievance would significantly interfere with the determination of that policy. The Board's defense that the grievance provides no details as to any specific actions and behaviors of Yoder's superiors goes to the merits of the grievance, which may be determined by an arbitrator.

ORDER

The request of the Monroe Township Board of Education for a restraint of binding arbitration is granted as to the following sections of the April 11 grievance: section 1b, but only with respect to its challenge to a decision to assign PowerSchool scheduling responsibilities to an assistant principal; section

1c; sections 2d through 2j; sections 3l, 3m, 3r, 3s, 3t, and 3u; section 4w; sections 5y and 5z. The request is otherwise denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Papero voted in favor of this decision. None opposed. Commissioners Jones and Voos abstained from consideration.

ISSUED: April 30, 2020

Trenton, New Jersey