P.E.R.C. NO. 2022-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINDEN BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2021-029

LINDEN EDUCATION ASSOCIATION,

Respondent.

SYNPOSIS

The Public Employment Relations Commission denies the Board's request for restraint of binding arbitration of the Association's grievance contesting the reduction of certain teaching staff members' salaries when they were transferred from 12-month to 10-month positions for the 2020-2021 school year. The Commission finds that the Board has a managerial prerogative and statutory right pursuant to N.J.S.A. 18A:28-9 to leave positions unfilled for educational or budgetary reasons and to reassign teaching staff to positions of need. However, the Commission holds that the grievance seeks only to avoid an immediate salary reduction due to the transfer and that it would not significantly interfere with the Board's determination of educational policy to arbitrate whether the contract allows the grievants' salaries to be frozen until their positions on the 10-month salary guide reach where they were on the 12-month salary guide.

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.

P.E.R.C. NO. 2022-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINDEN BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2021-029

LINDEN EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Scarinci Hollenbeck, attorneys (Carolyn R. Chaudry, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (William P. Hannan, of counsel)

DECISION

On January 20, 2021, the Linden Board of Education (Board) filed a scope of negotiations petition seeking to restrain binding arbitration of a grievance filed by the Linden Education Association (Association). The Association asserts that the Board violated the parties' collective negotiations agreement (CNA) by reducing the salaries of teaching staff members M.P. and R.M. when they were involuntarily transferred from 12-month to 10-month positions for the 2020-2021 school year. The Board filed briefs, exhibits, and the certification of its

Superintendent, Dr. Marnie Hazleton. The Association filed a brief and an exhibit.[1/] These facts appear.

The Association represents a broad-based unit of Board employees including certificated instructional and educational services positions, technology technicians, secretarial and clerical employees, paraprofessionals and school aids, hall monitors, attendance officers, and crisis intervention aids. The Board and Association are parties to a CNA in effect from July 1, 2018 through June 30, 2021. The grievance procedure ends in binding arbitration.

Article XV, paragraph C. of the CNA, entitled "Discipline," provides:

> No employee shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

For the 2019-2020 school year, M.P. was appointed to the 12-month position of Instructional Coach. For the 2019-2020 school year, R.M. was appointed to the 12-month position of Site Coordinator (21st Century Grant). On July 30, 2020, the Board eliminated the 12-month Instructional Coach and Site Coordinator (21st Century Grant) positions for the 2020-2021 school year.

1/ The Association did not file a certification. N.J.A.C. 19:13-3.6(f)(1) requires that all pertinent facts be supported by certifications based upon personal knowledge.

The Board reassigned M.P. and R.M. back to 10-month teaching positions for the 2020-2021 school year. M.P. was reassigned to Teacher of Biology and R.M. was reassigned to Teacher of English. These reassignments placed M.P. and R.M. on the CNA's salary guide for 10-month teachers, which resulted in a loss of compensation compared to their 12-month positions.

Hazleton certifies that the 12-month positions were eliminated for reasons of economy and efficiency, including cuts in state aid, the need to utilize funds for COVID-19 reopening compliance, and the need to staff classes with appropriately certified teachers to directly instruct students. She certifies that the Board had to reallocate funds to purchase PPE and other supplies for the District's COVID-19 reopening plans. Hazleton certifies that due to the Families First Coronavirus Response Act (FFCRA), employees were entitled to additional paid sick leave and child care leave, which resulted in a shortage of available teaching staff for in-person instruction. Hazleton certifies that after discussing staffing needs with the Director of Human Resources, the Board decided to eliminate M.P.'s 12-month Instructional Coach position and R.M.'s 12-month Site Coordinator position and reassign them to vacant 10-month teaching positions for which they held teaching certificates and tenure.

On July 28, 2020, the Board's former Director of Human Resources provided a statement to M.P. and R.M. explaining that

the reason for the involuntary transfer was to avoid a Reduction in Force and loss of jobs by moving teaching staff members serving in support positions back to essential teaching positions. Hazleton certifies that when teaching staff are reassigned from 12-month to 10-month positions, they do not retain the salary of their prior position but are compensated based on the negotiated 10-month teacher salary guide.

On September 1, 2020, the Association filed a grievance asserting that the Board violated Article XV of the CNA by reducing the compensation of M.P. and R.M. when it involuntarily transferred them from 12-month to 10-month positions. As a remedy, the Association seeks that the grievants' salaries be maintained at their 12-month salary "until such time that the 10-month salary guide catches up to their 12-month compensation."[2/]

The Board denied the Association's grievance at every step. On December 22, 2020, the Association filed a request for binding grievance arbitration. 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:

2/ The parties refer to this type of temporary compensation freeze, in lieu of a reduction in compensation, as "redlining" salaries. The Commission has typically referred to this practice as "red-circling" salaries. See, e.g., N. Hudson Reg. Fire & Rescue Dist., P.E.R.C. No. 2004-18, 29 NJPER 453 (¶147 2003); Camden Bd. of Ed., P.E.R.C. No. 88-18, 13 NJPER 718 (¶18268 1987).

> 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.]

The Board asserts that it has a non-negotiable managerial prerogative pursuant to N.J.S.A. 18A:28-9 to abolish positions for reasons of economy or other good cause and therefore its decision to eliminate the grievants' 12-month positions and reassign them to available 10-month positions at a reduced salary is not arbitrable.[3/] It argues that the Instructional Coach and Site Coordinator positions were eliminated for the 2020-2021 school year due to reduced state aid and increased costs associated with COVID-19 measures, while the grievants were needed to fill vacancies in essential teaching positions. Citing Asbury Park Bd. of Ed., P.E.R.C. No. 2006-52, 32 NJPER 14 (¶7 2006) and Spotswood Bd. of Ed., P.E.R.C. No. 86-90, 12 NJPER 195 (¶17073 1986), the Board asserts that when an employee is transferred from an eliminated 12-month position to a 10-month position, loss of compensation is not arbitrable because the dominant concern is the public employer's managerial prerogative to determine educational policy. Finally, the Board argues that

3/ N.J.S.A. 18A:28-9 states: "Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article."

any alleged violations of tenured teachers' salaries should be heard by the Commissioner of Education.

The Association asserts that the grievance is arbitrable because it contests only the reduction in the grievants' salaries caused by the transfers, not the Board's authority to transfer staff members or leave the 12-month positions unfilled. The Association argues that the sole remedy it seeks - that the grievants' salaries be red-circled to avoid a reduction in compensation - does not interfere with the Board's prerogative to transfer them to 10-month teacher positions. The Association also contends that the positions have not actually been eliminated, but just left unfilled.

The Board replies that the Association's asserted distinction between whether the grievants' 12-month positions had been eliminated or left unfilled is a meritless semantics argument. It contends there is no dispute that no one filled the 12-month positions previously held by the grievants and that the grievants filled different 10-month positions that needed to be filled.

As a threshold matter, we do not find the Association's proffered distinction between leaving positions unfilled versus "eliminating" or "abolishing" them to be persuasive since the effect is substantively the same. We find that effectuating a RIF via leaving positions vacant versus formally eliminating them

from an organizational chart is a distinction without a difference. This is consistent with the Commissioner of Education finding that a school board's decision to leave a position unfilled is equivalent to abolishing the position. See Jamayla Scott v. City of Englewood Bd. of Ed., Agency Dkt. No. 177-8/17, 2018 N.J. AGEN LEXIS 1304 (Comm'r Educ. Nov. 2018) (RIF'ed social worker did not have tenure recall rights to unfilled social worker position because "the Board was within its rights in deciding not to fill the position, [and] petitioner would not be entitled to the position even if the Board failed to formally abolish the position because the Board - by not seeking or intending to fill the vacancy - essentially abolished the additional social worker position."; emphasis added).

The Board has a statutory right and managerial prerogative to abolish positions and reduce its staff for organizational and budgetary reasons pursuant to N.J.S.A. 18A:28-9. See Old Bridge Tp. Bd. of Ed. v. Old Bridge Tp. Ed Ass'n, 98 N.J. 523 (1985); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den., 81 N.J. 292 (1979). The Board also has a non-negotiable "managerial duty to deploy personnel in the manner which it considers most likely to promote the overall goal of providing all students with a thorough and efficient education." Ridgefield Park at 156. However, a public employer ordinarily has a duty to negotiate before reducing its employees' work hours

and compensation. See, e.g., Robbinsville Twp. Bd. of Educ. v. Washington Twp. Educ. Ass'n, 227 N.J. 192 (2016) (imposing three furlough days for teachers); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1 (1978) (reducing secretarial workday by three hours); In re Piscataway Tp. Bd. of Ed., 164 N.J. Super. 98 (App. Div. 1978) (reducing principals' work year from 12 to 10 months); and Hackettstown Bd. of Ed., P.E.R.C. No. 80-139, 6 NJPER 263 (¶11124 1980), aff'd, NJPER Supp.2d 108 (¶89 App. Div. 1982), certif. den., 89 N.J. 429 (1982) (11 and 12-month teaching positions replaced with 10-month positions).

Regarding the balancing of educational policy goals and teachers' terms and conditions of employment, the Supreme Court of New Jersey stated: "It is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions." Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgove Ed. Ass'n, 81 N.J. 582, 593 (1980). In that case, despite the school district's "budgetary consideration being the dominant element" in not compensating teachers for working two additional hours on the day before Thanksgiving, the Supreme Court held there was "no demonstration of a particularly significant educational purpose" and therefore "it cannot be said that negotiation and binding arbitration of that matter significantly or substantially

trenched upon the managerial prerogative of the board of education." Woodstown-Pilesgrove, 81 N.J. at 594.

Here, the Association does not challenge the Board's prerogative to leave the grievants' former positions unfilled or its prerogative to transfer the grievants to teaching positions it needed to fill. Thus, we find that there is not interference with the Board's managerial prerogative to determine educational policy by eliminating positions and transferring staff to positions of need. We also find that there is not significant interference with the Board's right pursuant to N.J.S.A. 18A:28-9 to eliminate positions for reasons of economy because the grievants do not seek to continue to advance in salary based on the 12-month salary guides for their previous positions. Woodstown-Pilesgrove, 81 N.J. at 593-594; Contrast Asbury Park, P.E.R.C. No. 2006-52, supra and Spotswood P.E.R.C. No. 86-90, supra (employees who were transferred from twelve to ten months positions sought to progress on salary guide of their previously held 12 month position, not be red-circled). Instead, to avoid an immediate reduction in compensation caused by the transfer, the Association seeks to have the grievants' salaries temporarily frozen until their new positions on the 10-month salary guide reach the level of their previously held 12-month positions. Cf. Plainfield Ass'n of School Administrators v. Plainfield Bd. of Ed., 187 N.J. Super. 11 (App. Div. 1982) (while principal

transferred to lower paid position could not arbitrate to continue on salary scale of prior position, the Court noted "there was no actual decrease in her current compensation at the time of the transfer.") Under these narrow circumstances, we find the Association's claim that the contract has been violated with respect to the grievants' compensation to be legally arbitrable and severable from the Board's managerial prerogative to eliminate positions for educational or budgetary reasons. The merits of the Association's claim, and any contractual defenses that the Board may raise, are not for us to consider. Ridgefield Park.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford recused himself.

ISSUED: August 26, 2021

Trenton, New Jersey