P.E.R.C. NO. 2022-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2021-041

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of the Association's grievance alleging that the Board violated the parties' CNA by by assigning the grievant to work as a shared guidance counselor in another municipality under a shared services agreement. The Commission finds that the Association's grievance primarily challenges the Board's managerial prerogative to implement the shared services agreement, which is not legally arbitrable. The Commission finds that arbitration would substantially limit the Board's governmental policymaking powers in determining how it will deliver its guidance counselor services.

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, Porzio Bromberg & Newman, P.C., attorneys (Kerri A. Wright, of counsel and on the brief)

For the Respondent, Springstead & Maurice, Esqs., attorneys (Alfred F. Maurice, of counsel and on the brief; Harold N. Springstead, of counsel and on the brief)

DECISION

On May 10, 2021, the Ridgefield Park Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association (Association). The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) by assigning the grievant to work as a shared guidance counselor two days per week at the Little Ferry Board of Education through a shared-services agreement (Agreement).

The Board filed briefs, exhibits and the certifications of its counsel, Kerri A. Wright, and its Superintendent of Schools, Dr. Angela P. Bender. The Association filed a brief, exhibits and the certification of its President, Mary Ellen Murphy. These facts appear.

The Association represents a broad-based negotiations unit including teachers, guidance counselors, and other titles as enumerated in Article I of the CNA. The Board and Association are parties to a CNA with a term of July 1, 2018 through June 30, 2021. The grievance procedure ends in binding arbitration.

The record contains copies of two shared services agreements for the 2018-2019 and 2019-2020 school years (Agreements). The Agreements were adopted by Board resolutions dated August 22, 2018 and April 24, 2019. The Agreements provide for a shared guidance counselor between Ridgefield Park and Little Ferry school districts. Under the Agreements, the grievant, a guidance counselor, works three days in Ridgefield Park and two days in Little Ferry. The Board asserts that the grievant was hired in July 2018 and has been working in both school districts since commencing her employment. Bender further certifies that the Agreement is necessary for various reasons including that Ridgefield Park and Little Ferry have a sending-receiving agreement where Little Ferry sends high school students to Ridgefield Park and the shared guidance counselor facilitates the

integration of Little Ferry students into the Ridgefield Park school system. Bender also certifies that in implementing the Agreement the Board has adhered to the hours and compensation in its CNA. The Board asserts the grievant has not been required to work a single additional hour due to her assignment to Little Ferry, which has remained the same since she began her employment with Ridgefield Park.

Murphy certifies that due to a debt crisis approximately five years ago, it was determined to be in the best interest of Little Ferry and Ridgefield Park to share a counselor. At that time, Little Ferry had no social worker and only a part-time counselor, but currently, Little Ferry has a full-time social worker as well as a full-time guidance counselor.

Murphy also certifies that the grievant carries a full caseload at Ridgefield Park High School and has as many students as any other counselor. She further certifies that the high school counselors already have more students than the county average. Murphy asserts that the grievant is being required to handle the same amount of Ridgefield Park High School students as the other counselors but in only three days, while she works with additional students at Little Ferry the other two days of the week. Murphy certifies that the grievant has over 300 students that she is responsible for. Murphy further certifies that the grievant has schedules in both schools covering the entire 8th

and 9th grades. She asserts that this caseload between the two school districts puts tremendous strain on the other counselors when the grievant has students in need and she is not at Ridgefield Park, and her colleagues need to assist in the overflow of work.

On August 17, 2020, the Association filed its grievance, which stated in pertinent part:

> [The grievant] has been going to Little Ferry two days per week to work with the eighth graders there. A one-year memorandum was issued for school year 2018-2019 to allow for this practice. There was no agreement in place for the 2019-2020 school year, and yet the practice continued. The Association will no longer allow this practice to continue.
>
> There is no contract language that allows for employees to be loaned to other districts. This practice is in blatant violation of the agreement and must be stopped.
>
> In addition to the lack of a shared services agreement with Little Ferry, [the grievant] has a full case load of 9th graders in Ridgefield Park. When she is in Little Ferry, this puts a strain on her students and the other counselors at the High School.
>
> Finally, there is money allocated in the Ridgefield Park budget to pay Ms. Anderson's position in full. Keeping her in the High School full-time is in the best interest of her students.
>
> [The grievant] is an employee of the Ridgefield Park Board of Education and should only be working in Ridgefield Park.

The relief sought by the Association was an "immediate cessation of this time-sharing with Little Ferry" and to "cease and desist of this type of practice."

On September 26, 2020, Bender denied the grievance, stating in pertinent part:

> The Board's ability to enter into these agreements and assign staff members in accordance with these agreements falls within its non-negotiable managerial prerogative to determine staff member assignments. Of course, the days, hours, and workload assigned to the guidance counselor position will continue to not violate any provision of the 2018-2021 Agreement between the Board and the Association. While I appreciate the Association's thoughts, staff assignments are an educational determination that is not appropriate to be decided through the grievance procedure. For that reason, and because the grievance fails to identify a violation of the contract, the grievance must be denied.

At the next step of the grievance procedure, on October 20, 2020, the Board denied the Association's grievance on similar grounds. On October 30, 2020, the Association submitted a Request for Submission of a Panel of Arbitrators. 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.]

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 Board argues that it has a non-negotiable, managerial prerogative to enter into the Agreement with Little Ferry and

assign the grievant to Little Ferry to effectuate that Agreement. The Board asserts that the grievant's assignment to Little Ferry is not disciplinary in nature and there are no severable issues of compensation or work hours as this has been her assignment since she began employment with Ridgefield Park.

The Association argues that the Board's unilateral implementation of the Agreement and assignment of the grievant to Little Ferry was a change in her duties that violated the parties' CNA, and therefore, the assignment is mandatorily negotiable and legally arbitrable. The Association asserts that there is no "shared services" agreement and that the grievant's assignment is "ultra vires". The Association argues that absent a signed agreement, the reassignment of the grievant was illegal. The Association demands that the grievant be returned to her original full-time assignment in Ridgefield Park and that she be compensated for the "additional services" she provided to Little Ferry that exceeded her full-time case load at Ridgefield Park.

In its reply brief, the Board denies the Association's claims that the Agreement does not exist, providing copies of the Agreements as exhibits in a supplemental certification. The Board reiterates that the grievant's assignment has not changed and her duties at Little Ferry are not "additional" work as she has been doing the same work since beginning her employment nor have her hours, salary, or benefits changed. The Board argues

that due to the Agreement the grievant's assignment is no different than if she were assigned to multiple schools within the same district. Lastly, the Board argues that the Commission cases cited by the Association are inapposite because they involve issues of increased work hours and disciplinary transfers, and neither of these issues are germane to the instant matter.

The record reflects that the Board executed the Agreements with Little Ferry, which were approved by Board resolutions, and that such Agreements provide for a shared guidance counselor between the two school districts. The Association characterizes its grievance as "a dispute respecting the authority of the Board to assign [the grievant] to work in another district without a board resolution approving the same for the school year in question." Thus, the Association primarily challenges the Board's ability to implement the Agreements with Little Ferry, an issue which we find to be not legally arbitrable. Applying the third prong of the Local 195 test, arbitration would substantially limit the Board's governmental policymaking powers in determining how it will deliver its guidance counselor services.

A public employer has a managerial prerogative to determine how governmental services will be delivered and the staffing levels associated with the delivery of those services. See

Paterson Police PBA, Local 1 v. Paterson, 87 N.J. 78, (1981); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982). The Commission has restrained arbitration challenging a municipality's unilateral implementation of a shared services agreement, finding that restricting the employer's right to enter into such an agreement would substantially limit its governmental policy powers to determine how it will deliver services to the public. See Collingswood Bor., P.E.R.C. No. 2019-8, 45 NJPER 111 (¶29 2018); see also Union Cty., P.E.R.C. No. 2010-82, 36 NJPER 183 (¶67 2010). Moreover, the Board has a managerial prerogative to assign duties if they are incidental to or comprehended within an employee's job description and normal duties. New Jersey Highway Auth. and IFPTE Local 193 (Toll Supervisors of America), AFL-CIO, P.E.R.C. 2002-76, 28 NJPER 261 (¶33100 2002), aff'd, 29 NJPER 276 (¶82 App. Div. 2003).

The Association has not established any severable issues of compensation, increased work hours, or work outside the scope of her job description that could render the grievance arbitrable. The Association insists that the grievant's duties in Little Ferry are "additional" work; however, the record establishes that the grievant has been performing this same assignment for the same pay since commencing her employment. The grievant is assigned the normal duties of a guidance counselor at both Ridgefield Park and Little Ferry. The Association characterizes

the grievant's work at Little Ferry as a "reassignment", but the record does not establish that there has been any change to her working conditions, be it compensation, working hours, or location.

In Warren Hills Reg. Sch. Dist., P.E.R.C. No. 2022-6, 48 NJPER 110 (¶28 2021), the Commission found that an alleged increased workload and resulting strain on several guidance counselors, following the retirement of one of the Board's guidance counselors, was not arbitrable because the Association members' interest did not outweigh the Board's managerial prerogative in deciding to not fill the vacancy created by the guidance counselor's retirement. We found, despite the increased workload resulting from the retirement, that the Board did not require any of the guidance counselors to work additional hours or change schedules to complete the additional work. Moreover, all of the additional work assigned to the remaining guidance counselors was encompassed within their normal duties. Likewise, here, the grievant has not been required to work any additional hours and her assignments are encompassed within her normal duties.

Given all of the above considerations, after balancing the parties' interests, we find that the Board's interests in implementing the Agreements and determining how to best deliver guidance counselor services outweigh the Association's interest

in having the grievant work only in the Ridgefield Park school district. For the foregoing reasons, we find that the Association's grievance, seeking "immediate cessation" of the Agreements, is not legally arbitrable.

ORDER

The Ridgefield Park Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: February 24, 2022

Trenton, New Jersey