

P.E.R.C. NO. 93-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-118

NEPTUNE TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Neptune Township Education Association against the Neptune Township Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required teachers, without additional compensation, to teach three full days of classes the first week of the 1991-1992 school year. The Commission finds that the Association's claim for additional compensation for extra student contact time is mandatorily negotiable and legally arbitrable.

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Appearances:

For the Petitioner, Patterson & Hundley, attorneys
(James T. Hundley, of counsel)

For the Respondent, Klausner, Hunter & Cige, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On June 22, 1992, the Neptune Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Neptune Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required teachers, without additional compensation, to teach three full days of classes the first week of the 1991-1992 school year.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's certified educational personnel and certain other employees. The parties

entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1994. The grievance procedure ends in binding arbitration.

On August 14, 1991, the superintendent of schools sent a letter notifying the elementary school staff that the first three days of school -- September 4, 5, and 6 -- would consist of full day academic schedules. In prior years, the first three days of school consisted of half-days of academic instruction and half-days of in-service training for staff members. The letter also stated that the traditional in-service days would be rescheduled for later in the 1991-1992 school term.

On November 1, the Association's president requested a meeting with the superintendent to discuss the first three days of the 1991-1992 school year. The president met with the assistant superintendent and asked that elementary school teachers be paid for three extra half-days of student contact time. The assistant superintendent denied that request.

On January 24, 1992, the Association demanded arbitration. It identified this grievance to be arbitrated: "Terms and Conditions of Employment/Opening Week of School Year - 1991/92." This petition ensued.

During the 1991-1992 school year, the Board scheduled three half-days of in-service training: January 13, February 10, and May 14, 1992. The Board contends that it has no contractual obligation to pay elementary school teachers extra compensation since the three

half-days of in-service training were rescheduled rather than eliminated.^{1/} The Association asserts, however, that in prior years the Board had scheduled additional half-days of in-service training besides the first three days of the school year and that the Board therefore increased student contact time when it decreased the number of in-service training days and thus increased the number of full days of academic instruction.

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.

^{1/} The Board further argues that the Association did not file a proper or timely grievance.

Thus, we do not consider the merits of the grievance, the Board's contractual defenses, or the Association's response to those defenses.^{2/}

Extra compensation for extra student contact time is mandatorily negotiable. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1988); Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd App. Div. Dkt. No. A-4545-85T7 (3/23/87), certif. den. 108 N.J. 208 (1987); see also Saddle Brook Bd. of Ed., P.E.R.C. No. 92-97, 18 NJPER 170 (¶23081 1992). We recognize that the Board asserts that there has been no increase in student contact time, but that argument raises a contractual defense for the arbitrator to consider. The Association's compensation claim is mandatorily negotiable and legally arbitrable.

^{2/} We specifically decline to consider whether the grievance and demand for arbitration encompass a claim that the Board has increased the number of full days of academic instruction. We had, on occasion in the past, issued restraints of binding arbitration and refused to consider the negotiability of claims not expressly raised in the grievance or demand for arbitration. See, e.g., North Hunterdon Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 86-55, 11 NJPER 707 (¶16245 1985). We have since clarified that the question of whether a grievance or demand raises a particular contractual claim presents a contractual arbitrability question rather than a precondition to a legal arbitrability determination. City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1988).

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Smith and Wenzler voted in favor of this decision. Commissioner Goetting voted against this decision. Commissioner Bertolino abstained from consideration. Commissioners Grandrimo and Regan were not present

DATED: November 25, 1992
Trenton, New Jersey
ISSUED: November 25, 1992