

P.E.R.C. NO. 95-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-60

THE EDUCATION ASSOCIATION OF MORRIS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by The Education Association of Morris against the Morris School District Board of Education. The grievance contests the elimination of a stipend for teachers who participate in a site-based management program. The Commission finds that if the Board exercises a prerogative to operate such a program, it may contractually obligate itself to pay participating employees.

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, Wiley, Malehorn & Sirota, attorneys
(Fredric J. Sirota, of counsel; Christine G. Moore, on the
brief)

For the Respondent, Bucceri & Pincus, attorneys
(Louis P. Bucceri, of counsel)

DECISION AND ORDER

On January 3, 1995, the Morris School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by The Education Association of Morris ("TEAM"). The grievance contests the elimination of a stipend for teachers participating in a site-based management program.

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

TEAM represents the Board's certified personnel and certain other employees. In January 1991, the parties entered into an agreement stating that site-based management teams would operate pilot programs in two schools. The site-based teams would make

decisions about curriculum, staff, budget and strategic planning. Administrators, teachers, and parent representatives would be equal partners in making these decisions.

The parties entered into a collective negotiations agreement effective from July 1, 1992 through June 30, 1995.

Article 6 provides:

The Site-Based Management Program established during 1991 shall continue and may be expanded to include additional schools within the District.

The pilot program will be terminable at the request of either party at the end of this labor agreement (June 30, 1995). The parties shall meet within the last 30 days in order to reach a determination as to the continuance of the program.

The contract's grievance procedure ends in binding arbitration of contractual disputes.

The site-based management program began in the 1991-1992 school year and continued in subsequent years. Before the 1994-1995 school year, participating teachers were paid a stipend. But the Board then eliminated the stipend.

On September 22, 1994, TEAM filed a grievance over "[t]he elimination of a stipend for the site-based management program for the 1994-1995 school year. TEAM believes that the stipend is a contractual obligation that the Board has to the members of the Site-Based Teams."

The Board denied the grievance and TEAM demanded arbitration. The demand asserts that the denial of the stipend

violates "past practice and other relevant contract language." The demand sought "payment of full stipend to participants." 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 contractual merits of the grievance or any contractual defenses the Board may have.^{1/}

The parties agree that Article 6 is not mandatorily negotiable and that the Board cannot contractually obligate itself to operate a site-based management program. But TEAM argues that if the Board exercises its prerogative to operate such a program, it

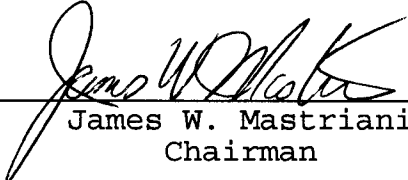
^{1/} We deny the Board's request for an evidentiary hearing on the questions of what site management activities employees undertook during the 1994-1995 school year and whether the employees knew that the stipend had been eliminated. These questions do not go to the legal arbitrability, but instead go to the merits of TEAM's claim that the Board had contractually obligated itself to pay a stipend for any teachers participating in the program. We also deny the Board's request for oral argument.

may contractually obligate itself to pay participating employees. We agree. Compensation for work performed is mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). Whether an employer will operate a site-based management program is a separate question from whether it agreed to pay participating employees. See City of Elizabeth v. Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985). And whether the Board so agreed is a mandatorily negotiable question for the arbitrator to resolve.

ORDER

The request of the Morris School District Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 23, 1995
Trenton, New Jersey
ISSUED: May 24, 1995