

P.E.R.C. NO. 86-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-86-13

OLD BRIDGE EDUCATION ASSOCIA-
TION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance the Old Bridge Education Association filed against the Old Bridge Board of Education. The grievance alleged the Board violated its agreement with the Association when it did not fill a secretarial position and increased the workload of the remaining secretaries. The Commission holds that the dispute predominantly involves the Board's managerial prerogative not to fill the position of secretary to the superintendent and its inseparable consequences.

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Appearances:

For the Petitioner, Wilentz, Goldman & Spitzer, Esqs.
(Harold G. Smith, Of Counsel and Steven J. Tripp, On
the Brief)

For the Respondent, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Of Counsel)

DECISION AND ORDER

On August 27, 1985, the Old Bridge Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Old Bridge Education Association ("Association") has filed against it. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it did not fill a secretarial position and increased the workload of the remaining secretaries.

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

The Association is the majority representative of the Board's certified teaching personnel, secretaries, custodians and certain other employees; the recognition clause, however, excludes the secretaries who work for the Superintendent, Assistant Superintendent and Business Administrator/Board Secretary. The Board and the Association have entered into an agreement effective from July 1, 1983 through June 30, 1985. Its grievance procedure ends in binding arbitration of contractual disputes.

It appears that the superintendent's secretary resigned. The Board posted this vacancy, but did not hire a replacement and instead distributed that secretary's work to other secretaries and student workers in the office. The Board has not abolished the position and instead has decided not to fill it now.

On April 25, 1985, the Association filed a grievance. The grievance alleges that the Board violated the following contractual articles: I (Recognition), II (Negotiation Procedure), IV (Teachers' and Board's Rights), XXXI (Secretaries and Clerks), and Article XXXVI (Miscellaneous). The grievance specifically alleges that the secretaries' increase in workload should have been negotiated and students were improperly used to do confidential work.

On May 9, this grievance was denied as untimely.

On July 18, the Association demanded arbitration. it describes the nature of the grievance as "failure to negotiate the compensation for an increase in work for secretaries and clerks." This petition ensued.

The Board asserts that any workload increase resulting from a decision to hold open a secretarial position is non-negotiable. It relies on In re Maywood Bd. of Ed., 168 N.J. Super 45 (App. Div. 1979), certif. den. 81 N.J. 792 (1979) ("Maywood") and Commission decisions applying Maywood.

The Association asserts that Maywood is distinguishable because this case does not concern a reduction in force and because this case involves the redistribution of allegedly confidential work to other secretaries, perhaps jeopardizing their continued membership in the negotiations unit. The Association also argues that Maywood is no longer good law in light of Old Bridge Bd. of Ed. v. Old Bridge Ed. Assn., 98 N.J. 523 (1985) ("Old Bridge") and City of Elizabeth v. Elizabeth Fire Officers Assn., Local 1040, 198 N.J. Super 382 (App. Div. 1985) ("Elizabeth").

The Board replies that this case is not factually distinguishable from Maywood and that Maywood is still good law.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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.

Id. at 154.

Thus, we do not consider the merits of the Association's grievance or any defenses, including timeliness, the Board 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 403-404

These tests apply to questions concerning school board employees. Old Bridge; Wright Bd. of Ed. v. City of East Orange, 99 N.J. 112 (1985); Woodstown-Pilesgrove Education Assn., 81 N.J. 582, 592 (1980).

Under all the circumstances of this case, we hold the dispute predominantly involves the Board's managerial prerogatives and may not be submitted to binding arbitration. Maywood held that

a school board has a non-negotiable managerial prerogative to reduce its work force and that increases in workload stemming from that reduction are non-negotiable. See also Kingwood Tp. Bd. of Ed., P.E.R.C. No. 82-31, 7 NJPER 584 (¶12262 1981) (decision not to replace teacher's aide); North Bergen Bd. of Ed., P.E.R.C. No. 82-109, 8 NJPER 317 (¶13143 1982) (decision not to rehire); North Bergen Bd. of Ed., P.E.R.C. No. 82-126, 8 NJPER 397 (¶13181 1982) (decision not to rehire). Mainland Reg. H.W. Bd. of Ed., D.U.P. No. 85-20, 11 NJPER 162 (¶16070 1985) (no replacement for principal on leave of absence); North Hunterdon Bd. of Ed., P.E.R.C. No. 86-55, 11 NJPER 707 (¶16245 1985) (reduction in force of teacher aides). Maywood and these cases prohibit arbitration over the Board's decision not to fill temporarily the position of secretary to the superintendent. See also City of Paterson v. Paterson PBA Local No. 1, 87 N.J. 78 (1981). Maywood and these cases also preclude arbitration over the consequences -- increased workload for other employees -- inseparable from that decision^{1/}. Old Bridge and Elizabeth do not overrule these aspects of Maywood, even though they do establish that not all consequences of a managerial decision

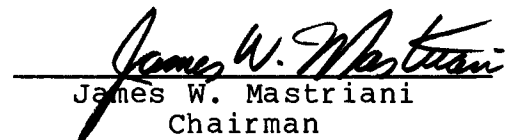
^{1/} We are not persuaded by the argument that there is a potential for some of these other employees to perform confidential work and thus have their inclusion in the negotiations unit jeopardized. There are no factual allegations that these employees have performed confidential work or that the Board has abused the Act's confidential employee exemption by spreading the confidential work to maximize the exclusions. Also, allegations that students are performing confidential work are clearly non-arbitrable.

are non-negotiable. Finally, under the particular circumstances of this case, we do not believe a sufficient basis exists for severing the compensation claim in the demand for arbitration from the dominant non-negotiable issues. There is no claim that the secretaries had to work longer hours or during duty-free time nor has the Association specifically shown how the workload might have otherwise increased significantly. Under all these circumstances, we restrain binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Reid abstained. Commissioners Hipp and Horan were not present.

DATED: Trenton, New Jersey
April 18, 1986
ISSUED: April 21, 1986