

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WAYNE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-97

WAYNE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Wayne Township Board of Education for a restraint of binding arbitration of a grievance filed by the Wayne Education Association. The grievance contests a directive by elementary school principals that teachers list assignments, list supplemental materials, and refer to core curriculum standards in their plan books. The Commission finds that the development and substance of teacher lesson plans are not negotiable.

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. 99-29

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Appearances:

For the Petitioner, Fogarty & Hara, attorneys (Stephen R. Fogarty, of counsel; Jane Gallina Mecca, on the brief)

DECISION

On June 11, 1998, the Wayne 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 Wayne Education Association. The grievance contests a directive by elementary school principals that teachers list assignments, list supplemental materials, and refer to core curriculum standards in their plan books. The Association contends in its grievance documents that the Association and former superintendent had an agreement regarding plan book requirements and the new plan book requirements issued by the principals violate that agreement.

The Board has filed exhibits and a brief. The Association has not responded. These facts appear.

The Association represents teaching staff members employed by the Board. The parties' grievance procedure ends in binding arbitration.

By letter of March 15, 1989, the former superintendent of schools, Robert A. Winter, stated the Board's expectation that teachers' plan books include a statement of objective for the lesson, methodology to be employed, information about the lesson's content, and the lesson evaluation procedure.

On November 6, 1997, the Association filed a grievance seeking to have the Board honor the alleged 1989 agreement with the former superintendent.^{1/} The grievance asserts that principals at the elementary schools have violated this agreement by requiring teachers to list assignments, list supplemental materials and refer to core curriculum standards in their plan books. The current superintendent of schools, Ray V. Kwak, denied the grievance. The Association then demanded arbitration and 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

^{1/} We assume that the agreement referenced in the grievance and the March 15, 1989 letter are the same document.

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 this grievance or any contractual defenses 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 404-405]

The development and substance of teacher lesson plans are generally not negotiable. Paterson School Dist., P.E.R.C. No. 92-118, 18 NJPER 303 (¶23130 1992); Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984). There is no basis here to reach a different conclusion. We therefore restrain arbitration.

ORDER

The request of the Wayne Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: September 24, 1998
Trenton, New Jersey
ISSUED: September 25, 1998