

P.E.R.C. NO. 92-94

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-48

NEWARK TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Newark Teachers Association against the Newark Board of Education. The grievance contests the Board's decision, following the retirement of one cafeteria manager, to require each of the other cafeteria managers to supervise an additional school. Under the facts of this case, the grievance predominantly involves the Board's prerogative not to replace a retired employee and there is no severable compensation claim.

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Appearances:

For the Petitioner, Bucceri & Pincus, attorneys  
(Gregory T. Syrek, of counsel)

For the Respondent, Office of the General Counsel of the  
Newark Board of Education (Associate Counsel Carolyn Ryan  
Reed, on the briefs)

DECISION AND ORDER

On October 31, 1991, the Newark Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Newark Teachers Association. The grievance contests the Board's decision, following the retirement of one cafeteria manager, to require each of the other cafeteria managers to supervise an additional school.

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

The Association represents the Board's cafeteria managers and head cooks. The Board and the Association entered into a collective negotiations agreement effective from July 1, 1988 through June 30, 1991. Article XVI, Section 7A provides:

A regular schedule of daily assignments of Managers to School cafeterias to be supervised by them shall be set up at the beginning of each school year. Such schedules shall be prepared under the direction of the Director of Cafeteria Services and must be approved by him/her. Such schedules may be changed when necessary after approval by the Director. The Director of Cafeterias shall make reasonable efforts to assign Managers on such basis as to provide for an equitable distribution of workload among Managers.

A management rights clause recognizes the Board's right to direct its work force and make assignments. An overtime clause entitles these employees to time and one-half for all authorized hours over 40 per week. The grievance procedure ends in binding arbitration.

Before May 1, 1991, each cafeteria manager was assigned to manage the cafeterias in four schools. Among the duties of cafeteria managers are supervising staff, covering for absent staff, planning menus and supervising the preparing and serving of meals, placing supply orders, completing forms, controlling inventory, preparing reports and overseeing cleaning.

After a cafeteria manager retired, the Director of Cafeterias reallocated the four schools that had been supervised by that manager to the four remaining managers. Thus, effective May 1, 1991, each cafeteria manager was required to manage five cafeterias. The cafeteria managers have not been asked to work longer hours, to work during duty-free hours, or to perform duties outside their job description.

The Association filed a grievance contesting the unilateral assignment of an extra school to each manager. As a remedy, the

grievance asked that each manager be paid \$1295 (2/10 of original manager's salary divided by 4).

A Board hearing officer denied the grievance. He found that the assignment of one additional school did not change the "conditions of employment" since each manager's duties remained the same.

The Association then demanded arbitration. This petition ensued.

The Board asserts that it has a managerial prerogative to assign cafeteria managers extra duties within their normal responsibilities. The Association responds that workload increases and compensation for extra duties are mandatorily negotiable.

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. [Id. at 154]

Thus, we cannot consider the merits of the grievance or any contractual defenses the Board may have.

In Toms River Bd. of Ed., P.E.R.C. No. 84-4, 9 NJPER 483 (¶14200 1983), we restrained binding arbitration over a school board's decision to eliminate one cafeteria manager position and to

have the other cafeteria manager cover both elementary schools. No compensation claim was presented.

In Old Bridge Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd App. Div. Dkt. No. A-4429-85T6 (3/25/87), cert. den. 108 N.J. 665 (1987), we restrained binding arbitration over a school board's decisions not to fill the position of a secretary who had resigned and to redistribute that secretary's work among the remaining secretaries. We also held, under the circumstances, that a sufficient basis did not exist for severing an arbitrable compensation claim from the dominant non-negotiable issue. We noted that there was no claim that the secretaries had to work longer hours or during duty-free time and that the Association did not specifically show how the workload might have otherwise increased significantly.

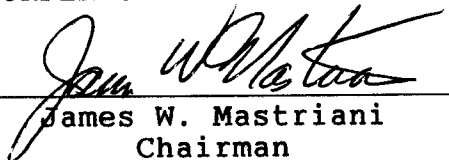
In Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 87-137, 13 NJPER 360 (¶18148 1987), recon. den. P.E.R.C. No. 87-163, 13 NJPER 589 (¶18220 1987), we followed Old Bridge and restrained arbitration of a grievance similar to the one in this case. There, the board reduced its staff of school social workers by one and increased the number of schools assigned to the grievant social worker from three schools to four, thereby increasing her caseload. We restrained arbitration over the workload increase and a compensation claim. As in Old Bridge, we noted that there was no allegation that the employee would have to work longer hours or during duty-free time or would have to perform duties outside her job classification.

Toms River, Old Bridge, and Caldwell-West Caldwell control this case. The Board has elected not to fill a vacancy and has redistributed the retiree's duties among the remaining staff. Under the facts of this case, the grievance predominately involves the Board's prerogative not to replace a retired employee and there is no severable compensation claim. We accordingly must restrain binding arbitration. See also Fair Lawn Bd. of Ed., P.E.R.C. No. 87-135, 13 NJPER 356 (¶18146 1987) (restraining arbitration of grievance seeking compensation for increased workload arising when vice principal position was abolished and duties were distributed among five other administrators). Contrast Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987) (compensation claim for having to teach extra class is mandatorily negotiable).<sup>1/</sup>

ORDER

The request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: February 19, 1992  
Trenton, New Jersey  
ISSUED: February 20, 1992

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<sup>1/</sup> We note that the parties' contract has expired. The Association is free to propose increased compensation for cafeteria managers based on their increased responsibilities during successor contract negotiations.