

P.E.R.C. NO. 85-119

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAMSEY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-57

RAMSEY TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request by the Ramsey Board of Education to restrain binding arbitration of a grievance that the Ramsey Teachers' Association filed against the Board. The grievance alleged the Board violated the parties' collective negotiations agreement by assigning four physical education teachers more than three teaching preparation periods at one time. The Commission holds that the grievance may be submitted to binding arbitration because it predominantly involves the mandatorily negotiable subject of work load.

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Appearances:

For the Petitioner, Cassetta, Brandon and Taylor  
(Bruce Taylor, Consultant)

For the Respondent, Zazzali, Zazzali, & Kroll, P.A.  
(Paul L. Kleinbaum, On the Brief)

DECISION AND ORDER

On January 17, 1985, the Ramsey Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a permanent restraint of binding arbitration of one aspect of a grievance which the Ramsey Teachers' Association ("Association") has filed. That aspect of the grievance claims that the Board violated the parties' collective negotiations agreement by assigning four physical education teachers more than three teaching preparation periods at one time.

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

The Association is the majority representative of the Board's non-supervisory certificated personnel including physical education teachers. The Board and Association have entered a

collective negotiations agreement effective from July 1, 1983 through June 30, 1985. Article 12, entitled Teaching Hours and Teaching Load, Section B4 provides:

The teachers in grades seven (7) through twelve (12) shall not be required to teach more than two (2) subject areas, nor more than a total of three (3) teaching preparations at any time except in foreign languages.<sup>1/</sup>

The agreement's grievance procedure ends in binding arbitration of grievances dealing with contractual terms.

Prior to the 1984-85 school year, the four physical education teachers each taught 6th, 7th and 8th grade physical education classes. Beginning in the 1984-85 school year, the Board required each of these teachers to teach a remedial gym class in addition.

On September 25, 1984, the Association filed a grievance on behalf of four physical education teachers at the Middle School. The grievance, as presented to the principal on October 4, 1984, asserted that the Board violated the collective negotiations agreement when it: (1) assigned these teachers 30 classes per week, (2) assigned additional teaching periods (six per day instead of five) on an involuntary basis, and (3) assigned more than three

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<sup>1/</sup> This clause or a variation of it has been in each of the parties' agreements since 1969.

daily teacher preparations.<sup>2/</sup> As a remedy, the Association sought increased compensation of 1.20% of each teacher's gross pay.

On October 17, 1984, the superintendent denied the grievance. On November 1, 1984, the Board affirmed this determination. The Association then sought binding arbitration and the instant petition ensued. The Board seeks to restrain arbitration of only the third aspect of the grievance.

The Board agrees that the Association may arbitrate the issues of whether there has been an increase in teaching periods, the length of the workday or the amount of pupil contact time. It asserts, however, that this third aspect of the grievance predominantly involves its right to assign teachers to teach certain classes.

The Association responds that the assignment of additional teaching preparations predominantly involves the negotiable issues of an increase in workload and pupil contact time.<sup>3/</sup> The

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<sup>2/</sup> The grievance refers to Article 12B.5, not 12B.4. This appears to be a mistake.

<sup>3/</sup> The Association defines a teaching preparation as a class for which a teacher must separately prepare; a preparation is based on ability or grade groupings. The Association asserts, for example, that a 7th grade English teacher who teaches one advanced class, two remedial classes and one average class has three teaching preparations since the two remedial classes require the same preparation and are treated as one. Thus, the Association asserts in this case that the four teachers previously had three preparations for teaching 6th, 7th and 8th grade classes and now have a fourth for teaching remedial gym.  
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Association also states that it is seeking return to the status quo as well as compensation for the alleged violation.

At the outset of our analysis, we stress the narrow boundaries of our scope of a jurisdiction:

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.

Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144, 154 (1978); Hillside Bd. of Ed., 2 NJPER 55,57 (1978). We therefore do not consider the contractual merits of the Association's grievance or the Board's defenses. We decide only whether the Board could legally agree to submit this aspect of the grievance to binding arbitration.

In Byram Township Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), we upheld the negotiability of a proposal stating that

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The Board does not contest this definition and these illustrations of teaching preparations, although it asserts that other cases might present more difficult definitional problems which would embroil arbitrators in educational policy matters. Be that as it may, we limit our determination to the arbitrability of this grievance. If a future dispute raising thornier factual questions arises, the Board may file another petition to restrain arbitration over that grievance.

departmental area teachers should not have more than two subject area preparations. We found that such a proposal predominantly involved the mandatorily negotiable subjects of work hours and work loads. The Appellate Division of the Superior Court affirmed. In re Byram Twp. Bd. of Ed. 152 N.J. Super. 12, 26 (App. Div. 1977). See also Englewood Bd. of Ed. v. Englewood Ed. Assn., 64 N.J. 1, 6-7 (1973); East Newark Bd. of Ed., P.E.R.C. No. 82-123, 8 NJPER 373 (Paral3171 1982).

There is no reason for a different result in this case. The Association's claim is that the clause limiting the number of teacher preparations, like the clauses directing the number of classes and teaching periods, was meant to protect against uncompensated and unilateral workload increases. The Association further asserts that this alleged contractual protection was abridged when the Board required each of the four physical education instructors to teach a remedial class in addition to their three other classes. In short, this grievance clearly presents a limited workload issue: has the Board increased teacher workload over the contractually set limits? Under Byram, that issue is mandatorily negotiable and arbitrable.<sup>4/</sup>

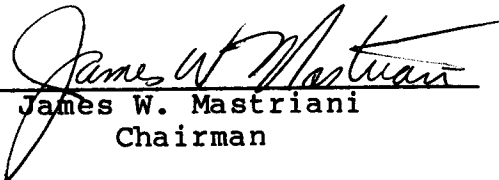
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<sup>4/</sup> We repeat that other grievances under the instant contract provision may present different arbitrability considerations under the balancing tests of Woodstown-Pilesgrove Ed. Assn. v. Woodstown-Pilesgrove Bd. of Ed., 81 N.J. 582 (1980). The Board has submitted hypotheticals in its brief which assume that the  
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ORDER

The request of the Ramsey Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch Graves and Wenzler voted in favor of this decision. Commissioner Suskin was opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey  
May 15, 1985  
ISSUED: May 16, 1985

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only teacher qualified to teach a particular course (for example physics) already had three teaching preparations. We do not decide those hypotheticals today. We do note, however, that even if a teacher may be required to accept an extra teaching preparation, the board may still have to negotiate and arbitrate over severable issues of additional compensation. Ramapo-Indian Hills Ed. Assn. v. Ramapo-Indian Hills Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1970).