

P.E.R.C. NO. 94-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOOD-RIDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-112

WOOD-RIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Wood-Ridge Education Association against the Wood-Ridge Board of Education to the extent, if any, the grievance contests the Board's right to schedule a fourth weekly session of the weight lifting club to ensure student safety. The Commission declines to restrain binding arbitration over the claim that the Board violated the parties' collective negotiations agreement when it required the weight club advisor to work extra hours without extra pay.

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Appearances:

For the Petitioner, Janeczko & Cedzidlo, attorneys (Mark T. Janeczko, of counsel)

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

DECISION AND ORDER

On June 3, 1993, the Wood-Ridge Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Wood-Ridge Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required a weight club advisor to work extra hours without extra pay.

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

The Association represents the Board's teachers and certain other non-supervisory employees. The parties entered into a collective negotiations agreement effective from July 1, 1990 to

June 30, 1993. Article II(c) provides:

Except as this Agreement shall hereinafter otherwise provide, all-legally binding terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the rules, regulations, and/or policies of the Board in force on said date shall continue to be so applicable during the term of this Agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce nor otherwise detract from any binding employee benefit existing prior to its effective date.

The grievance procedure ends in binding arbitration.

The contract contains a schedule of stipends for extracurricular assignments. For all three years of the contract, the annual stipend for the advisor to the weight lifting club is \$1,000.

Before the 1991-1992 school year, the club met three times a week for two hours a day. In 1991-1992, the club met four times a week for two hours a day. The Association contends that this change was to be effective for one year only. After teacher Joseph Weist was appointed to be the club's advisor for 1992-1993, he was advised that the club would meet four times a week for two hours a day.

On January 6, 1993, the Association filed a grievance. The grievance asserted that the Board had violated the past practice of having the weight lifting club advisor work three days a week for the \$1,000 stipend. It sought to have the three day a week schedule restored. The Board denied the grievance and the Association demanded arbitration. In its demand, the Association also sought

compensation for all time worked beyond three days a week. This petition ensued.

The Board asserts that it has a prerogative to establish the hours for an extracurricular activity, but acknowledges that a grievance seeking compensation for an alleged increase in hours is arbitrable. The Association asserts that the entire dispute is mandatorily negotiable under N.J.S.A. 34:13A-23. It contends that changes in work hours and/or pupil contact time are mandatorily negotiable.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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 do not consider the contractual merits of the grievance or any contractual defenses the Board may have. In particular, we do not decide whether the contract permits or precludes having an advisor work four days per week for the \$1000 stipend.

N.J.S.A. 34:13A-23 provides:

All aspects of assignments to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective

negotiations...except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations.

See Holmdel Bd. of Ed., P.E.R.C. No. 91-62, 17 NJPER 84 (¶22038 1991). The subject of this dispute is mandatorily negotiable and legally arbitrable if it concerns the "terms and conditions of employment concerning extracurricular activities." Under the facts of this case, we hold that the grievance raises legally arbitrable claims.

The Board has allegedly increased the work hours, work load, and pupil contact time of the weight club advisor without additional compensation. According to the Board, requiring the advisor to supervise a fourth session was necessary to ensure student safety. It asserts, more specifically, that the potential for injury and liability associated with weight lifting requires it to monitor this activity and consider the number of students involved, their experience and the limitations of its weight-lifting equipment.

The Association does not dispute that the Board has a responsibility to protect student safety. It also does not dispute that a school board has the right to determine that more pupil contact time and additional instruction is needed. It argues, however, that a board may not make the changes without first informing the union and negotiating over the changes. Brief at 11.

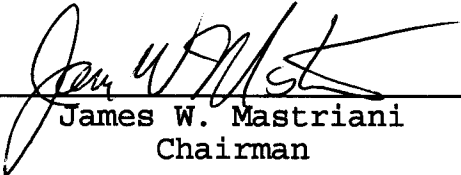
The dominant issue in this dispute, then, is whether the parties' contract permits or precludes having the weight club

advisor work four days for the \$1000 stipend. Because the claim for extra compensation involves terms and conditions of employment under N.J.S.A. 34:13A-23, we decline to restrain arbitration over that claim. Whether the parties contemplated that the \$1000 stipend would cover four sessions per week is a matter of contract interpretation to be decided by the arbitrator.

ORDER

The request of the Wood-Ridge Board of Education for a restraint of binding arbitration is granted to the extent, if any, the grievance contests the Board's right to schedule a fourth session to ensure student safety. The request is otherwise denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan abstained from consideration. Commissioner Bertolino was not present.

DATED: March 29, 1994
Trenton, New Jersey
ISSUED: March 30, 1994