

P.E.R.C. NO. 94-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PERTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-53

PERTH AMBOY FEDERATION/AFT LOCAL
857, NJSFT, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Perth Amboy Board of Education for a restraint of binding arbitration of a grievance filed by Perth Amboy Federation/AFT Local 857, NJSFT, AFL-CIO. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required two high school teachers to teach a sixth period each day in bilingual math. The Commission finds that the Board had a statutory duty to provide bilingual math instruction by teachers with endorsements in math and bilingual education. The Board tried to discharge that duty by hiring qualified teachers, but its efforts were in vain and it was forced to assign temporarily two teachers to teach an extra class. Given these circumstances, the Commission holds that the assignment of a sixth teaching period is not mandatorily or legally arbitrable.

P.E.R.C. NO. 94-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PERTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-53

PERTH AMBOY FEDERATION/AFT LOCAL
857, NJSFT, AFL-CIO,

Respondent.

Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys
(Lester Aron, of counsel; Elisa T. Sorrell, on the brief)

For the Respondent, Dwyer & Canellis, attorneys
(Brian Miller Adams, of counsel)

DECISION AND ORDER

On December 6, 1993, the Perth Amboy Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Perth Amboy Federation/AFT Local 857, NJSFT, AFL-CIO. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required two high school teachers to teach a sixth period each day in bilingual math.

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

The Federation represents the Board's full-time certified teaching staff members and certain other employees. The parties

entered into a collective negotiations agreement effective from July 1, 1993 through June 30, 1996. Article I of the portion of the contract applicable to teachers only is entitled Salary. Section E, subsection 3 sets forth extra salary amounts to be paid a teacher for a sixth period assignment. Article III of that portion is entitled Workday. Section B, entitled Preparation Periods, provides:

All teaching staff shall be entitled to five (5) forty-five (45) preparation periods per week, scheduled pursuant to contractual history and practice. Compensation for loss of a prep period shall be:

1993-94	-	\$17.15
1994-95	-	\$18.35
1995-96	-	\$19.50

Section C provides:

No secondary teachers shall be required to teach more than twenty-five (25) periods a week exclusive of lab periods; however, a teacher may be assigned five (5) additional periods to supervise study halls or to perform such other duties within his job description assigned by the administrator. This provision shall not apply to substitution duties.

Article V of the portion of the contract applicable to all employees is entitled General Conditions. Section C provides:

The Board agrees that it will make no changes in existing Board policy, benefits, or practice related to employee wages, hours, and conditions of employment not specifically included in this Agreement without prior negotiation with the Federation.

The contractual grievance procedure ends in binding arbitration.

The Board is obligated to provide bilingual math instruction to pupils of limited English proficiency. N.J.A.C.

6:31-1.3 to 6:31-1.9. Such pupils must obtain at least three credit years of mathematics. N.J.A.C. 6:8-7.1 et seq. Teachers of such math students must hold a New Jersey instructional certificate, with endorsements in math and bilingual education. N.J.A.C. 6:31-1.9.

At the beginning of the 1993-1994 school year, 60 students needed bilingual math instruction in order to graduate. The Board sought qualified teachers to provide bilingual math instruction by posting the position in the school buildings and advertising the position in local newspapers, but its efforts were unsuccessful. The Board therefore assigned two teachers -- Aracelis Maldonado and Ishmael Quintana -- who possessed the necessary endorsements to teach a sixth teaching period each day in bilingual math. Quintana and Maldonado were selected because they were the only properly certificated teachers whose preparation periods coincided with the time period the bilingual math classes could be scheduled. These assignments were intended to be temporary and to terminate as soon as the Board could fill the positions permanently. The Board found a qualified candidate and intended to fill the positions as of February 1, 1994 and relieve Maldonado and Quintana of their sixth period teaching assignments.

The Board is paying the two teachers at the compensation rate (\$6,000 per year) specified in the contract for teaching a sixth period during the 1993-1994 school year. According to the Board, this amount was negotiated based on the parties'

understanding that the extra teaching period was to take the place of a preparation period, not a duty period.

On October 6, 1993, the Federation filed a grievance on Maldonado's behalf. The grievance asserted that the involuntary assignment of a sixth teaching period violated the provisions of the contract capping the number of weekly teaching periods at 25 and maintaining the parties' past practices. The Federation's district representative asserts that the parties' past practices included any sixth teaching period assignments being voluntary. The grievance also noted that Maldonado was a diabetic who should not be exposed to stress and that Maldonado would soon offer an alternative to her being forced to teach an extra class. The record does not disclose whether an alternative plan was ever advanced.

On October 7, 1993, the high school principal denied the grievance, citing the emergency need to insure that bilingual math instruction is available so students can graduate. He expressed a willingness to discuss alternative plans with Maldonado and indicated Maldonado would be afforded relief concerning student contact, paperwork, and duplication.

On October 11, 1993, the Federation amended its grievance to include Quintana as well as Maldonado and appealed to the Superintendent. In its notice of appeal, the Federation sought these remedies for the alleged contractual violation: 1) immediate termination of the involuntary assignments, 2) compensation for each

day the teachers taught the sixth period, and 3) written confirmation that high school teachers could not be forced to teach a sixth period.

On October 13, 1993, the Superintendent denied the grievance. He concluded that the Board had the authority to assign extra student contact time for educational reasons, provided it paid the negotiated rate for any extra assignment.

On October 21, 1993, the Federation appealed the grievance to the Board. It added a claim that the Board had violated the clause guaranteeing five preparation periods a week. The Board denied the grievance. The Federation then demanded binding arbitration and this petition ensued. In its reply brief, the Board states that it found a qualified teacher to take over the extra assignments on or about February 1, 1994.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), provides:

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. [78 N.J. at 154]

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

Local 195, IFPTE v. State, 88 N.J. 383 (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]

No statute or regulation is alleged to preempt negotiations so we consider only the first and third standards.

Employees have a significant interest in negotiating over limits to their workload. We have thus held mandatorily negotiable the imposition of a sixth or seventh teaching period. Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 88-15, 13 NJPER 712 (¶18265 1987); Buena Reg. School Dist., P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985); Randolph Tp. Bd. of Ed., P.E.R.C. No. 84-17, 9 NJPER 581 (¶14242 1983); Buena Reg. School Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (¶10072 1979). Also mandatorily negotiable in the abstract is the

loss of a preparation period. Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976). Nevertheless, despite the negotiability of these workload provisions, this case presents extraordinary circumstances where an external State mandate to provide bilingual instruction coupled with the impossibility of finding qualified teachers necessitated temporarily assigning regular teachers a sixth teaching period. Cf. Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969), certif. den. 55 N.J. 310 (1970) (subsequent events made impossible a literal performance of contract terms); Sayreville Bd. of Ed., P.E.R.C. No. 94-13, 19 NJPER 444 (¶24207 1993) (sudden teacher resignation and inability to secure replacement factors in deciding Board had right to assign sixth teaching period).

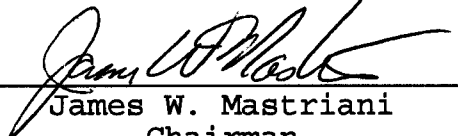
The Board had a statutory duty to provide bilingual math instruction by teachers with endorsements in math and bilingual education. The Board tried to discharge that duty by hiring qualified teachers, but its efforts were in vain and it was forced to assign temporarily two teachers with the necessary endorsements to teach an extra class each during the regular school day. If the Board did not make these assignments, students would not have satisfied graduation requirements imposed by State law. Given these circumstances, we hold that the temporary assignment of a sixth teaching period is not mandatorily negotiable or legally arbitrable. Although the Board claims that it has compensated these

teachers at the negotiated rate, it does not assert that compensation claims are not mandatorily negotiable in the abstract.

ORDER

The request of the Perth Amboy Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the assignment of a sixth teaching period.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision. Commissioner Regan abstained from consideration.

DATED: June 30, 1994
Trenton, New Jersey
ISSUED: June 30, 1994