P.E.R.C. NO. 87-137

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CALDWELL-WEST CALDWELL
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-87-45

CALDWELL-WEST CALDWELL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Caldwell-West Caldwell Education Association against the Caldwell-West Caldwell Board of Education. The grievance alleges the Board violated the parties' contract when it unilaterally increased the workload of a school social worker. The Commission finds that the grievance is outside the scope of mandatory negotiations because the increase stemmed from the Board's decision to reduce its force pursuant to N.J.S.A. 18A:28-9 and there is no allegation the employee would have to work longer hours or during duty-free time, or would have to perform duties outside her job classification.

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Appearances:

For the Petitioner, Metzler Associates,
(James L. Rigassio)

For the Respondent, Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, of counsel and on the brief)

DECISION AND ORDER

On January 3, 1987, the Caldwell-West Caldwell Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain arbitration of a grievance filed by the Caldwell-West Caldwell Education Association ("Association"). The grievance alleges that the Board violated the parties' collective negotiations agreement when it unilaterally increased the workload of a school social worker.

Both parties have filed briefs and documents. The following facts appear.

During the spring of 1986 the Board reduced its staff of school social workers by one. Shortly thereafter the Board decided to contract with a social worker primarily to serve the specialized

needs of students from single parent homes. It entered into a contract with the laid-off social worker to meet with parents at their convenience.

In April 1986, the Board advised social worker Michelle Wurzel that beginning in the 1986-1987 school year she would be responsible for cases from four schools. Previously she was responsible for three schools and handled between 55-65 cases per year. She alleged that the additional school would push her caseload up to 100 per year. Her principal does not deny that her individual caseload has increased but adds that the caseload is consistent with that of other social workers in the district and that the additional work would not interfere with the quality of the service.

The Association does not dispute either the validity of the reduction in force or the subsequent contract with the RIFed social worker. Compare Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd App. Div. Dkt. No. A-1818-80-T8. See also Rutgers University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83). Rather, it filed a grievance on Wurzel's behalf alleging only that the uncompensated workload increase stemming from the RIF violated the contract. It does not specify the contractual provisions it claims were violated. The Association seeks an order rescinding the workload increase or compensation for any increased workload. The grievance was denied by the Board and the Association demanded binding arbitration. This petition ensued.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

> 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 merits of the Association's grievance or any of the Board's potential defenses.

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, 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 403-404]

These tests apply to questions concerning school employees. Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985); Wright v. Bd. of Ed. of City of East Orange, 99 N.J. 112 (1985); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 592 (1980).

The Board contends that the grievance challenges the impact of an educational policy decision and is non-negotiable and non-arbitrable. It also asserts that arbitration of the grievance would interfere with its right to subcontract educational services.[1/]

The Association argues that uncompensated increases in workload have been found mandatorily negotiable and arbitrable.[2/]

The cases cited by the Association did not involve a reduction in force. This case is different because the workload increase stemmed from the Board's decision to reduce its force pursuant to N.J.S.A. 18A:28-9. See In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 792 (1979); Old Bridge Tp. 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), pet. for

1/ Since it is not in dispute we do not consider the issue of subcontracting of unit work to a recently laid off employee.

2/ Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78, 83 (¶18036 1986); East Brunswick Bd. of Ed., P.E.R.C. No. 86-109, 12 NJPER 352, 353 (¶17132 1986); Monroe Tp. Bd. of Ed. P.E.R.C. No. 86-56, 11 NJPER 709 (¶16246 1985).

certif. pending ("Old Bridge"). There is no allegation that Wurzel would have to work longer hours or during duty-free time, or would have to perform duties outside her job classification. See Montville Tp. Bd. of Ed. and Montville Tp. Ed. Ass'n, P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd, App. Div. Dkt. No. A-4545-85T7 (3/23/87) pet. for certif. pending; Old Bridge. Thus, this grievance is outside the scope of mandatory negotiations.

ORDER

The Board's request for a permanent restraint of binding arbitration of the grievance filed on behalf of Michelle Wurzel is granted.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained.

DATED: Trenton, New Jersey
April 22, 1987
ISSUED: April 23, 1987