P.E.R.C. NO. 97-78

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-73

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Willingboro Board of Education for a restraint of binding arbitration of a grievance filed by the Willingboro Education Association. The grievance seeks compensation for additional workload performed by child study team ("CST") members after two school psychologists left employment. The Commission finds that arbitration over an alleged agreement that CST employees would be paid additional compensation for this alleged increase in workload would not significantly interfere with any educational or governmental policy determinations.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, James P. Granello, attorney

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Keith Waldman, of counsel)

DECISION AND ORDER

On January 19, 1996, the Willingboro Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Willingboro Education Association. The grievance seeks compensation for additional workload performed by child study team ("CST") members after two school psychologists left employment.

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

The Association represents the Board's non-supervisory teachers and other professional employees, including school psychologists and CST members. The parties entered into a collective negotiations agreement effective from July 1, 1993 to June 30, 1996. The grievance procedure ends in binding arbitration.

During the 1993-94 school year, two school psychologists submitted their notices to resign/retire. One left employment in February 1994. During the rest of the 1993-1994 school year, other psychologists had their schedules changed to give them more time with CST members and less time testing pupils. Some testing was contracted out. The other psychologist left employment at the beginning of the 1994-1995 school year. According to the Board, CST members normally manage fifty cases involving special education pupils.[1/] Because N.J.A.C. 6:28-3.1(e) requires that each special education pupil's case be assigned to a CST member, the psychologists' caseloads had to be immediately reassigned.

The Association filed certifications of two learning consultants, two social workers and a school psychologist whose workloads were allegedly increased by the loss of the two psychologists. Each certification states that caseloads rose from 71 students to either 78 or 79 students. The certifications acknowledge that the Board decreased time spent on student testing and increased time for CST meetings, but assert that workload increased even with these accommodations. One employee stated that her workload had increased but did not specify that she had put in extra hours to accomplish these extra assignments, while another

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1/ N.J.A.C. 6:28-3.1(a) requires that each CST be composed of a learning disabilities teacher consultant, a school social worker and a school psychologist. Each pupil with an educational disability is assigned to a team member who manages the pupil's case.

stated that the extra work required her to put in an additional five hours per week. The other certifications reflect extra hours within that range, some of it at school, some of it during previously free time (e.g. lunch hours), and some on weekends.

The district sought replacements but did not fill the two positions until February and June of 1995.[2/] The Board states that CST members were not asked to work longer hours, give up duty-free time, or work outside their job description. It relies on a document, prepared in August 1994, showing fewer caseload assignments for the 1994-1995 school year than those contained in the CST member certifications prepared after the 1994-1995 school year. However, since the Board's document was issued before the school year, it may be a projection rather than a record of actual caseload assignments for that year. Moreover, that document appears to be based on the availability of two unnamed school psychologists and it is undisputed that those positions were not filled until February and June of 1995.

On October 14, 1994, the Association filed a grievance alleging that the vacancies had created an "unreasonable professional work demand" on CST members. The grievance seeks compensation in the amount of $100.00 per additional assigned case. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

2/ One position was filled during October 1994 by an outside candidate who did not stay beyond that time.

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 whether the contractual merits of the grievance or any contractual defenses the Board may have.

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. 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]

Workload, in general, is mandatorily negotiable. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979), certif. den., 81 N.J. 292 (1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26 (App. Div. 1977); Middletown Tp. Bd. of Ed., P.E.R.C. No. 88-118, 14 NJPER 357 (¶19138 1988). But the Board asserts that absent a significant increase in workload, such as in Bloomfield Bd. of Ed., P.E.R.C. No. 93-95, 19 NJPER 242 (¶24119 1993), aff'd 20 NJPER 324 (¶25165 App. Div. 1994), there is no severable claim for compensation from a workload increase caused by vacant positions. It contrasts Bloomfield, where a principal was required to supervise a second school, with Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 86-113, 12 NJPER 360 (¶17136 1986), aff'd NJPER Supp.2d 171 (¶151 App. Div. 1987), certif. den. 108 N.J. 665 (1987), where we restrained arbitration over an alleged workload increase for secretaries after the employer decided to leave a unit position vacant. There was no claim that the Old Bridge secretaries had to work longer hours or during duty-free time nor did the record show how workload had increased. The Board also relies upon Caldwell-W. Caldwell Bd. of Ed., P.E.R.C. No. 87-137, 13 NJPER 360 (¶18148 1987), where we restrained arbitration over a caseload increase for a social worker which was the result of a reduction in force, but which did not involve an increase in work hours, loss of unassigned time or the performance of duties outside the employee's job description. While the instant alleged workload increase was not

the result of a reduction in force pursuant to N.J.S.A. 18A:28-9, the Board asserts that because state law requires that all students be supervised, an "emergency" situation existed and under those circumstances the compensation claim should not be deemed severable from the Board's need to assign CST members extra cases.

In Lower Camden Cty. Reg. H.S. Dist No. 1, P.E.R.C. No. 93-65, 19 NJPER 119 (¶24057 1993), we restrained arbitration over a directive that CST members perform 60 assessments annually where there was no allegation or showing that employees had been forced to work longer hours, additional days, or during duty-free time or that workload had been increased in any other respect. But we allowed arbitration to the extent the grievance asserted that CST members performing that quantity of student assessments were entitled to compensation beyond their regular salary. This case is most applicable to this dispute. We hold that the claim for additional compensation for alleged increased workload is severable from the Board's need to assign extra cases and may be submitted to arbitration.

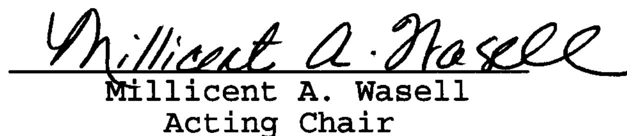
The Association's grievance does not seek a rollback in workload and indeed that rollback may have occurred since the Board has filled the vacant positions. The Association seeks only additional compensation for increased workload that flowed from the assignment of additional cases. Employees have an intimate and direct interest in the relationship between compensation and

workload. Arbitration over an alleged agreement that CST employees would be paid additional compensation for this alleged increase in workload would not significantly interfere with any educational or governmental policy determinations. Accordingly, we decline to restrain binding arbitration. See Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd NJPER Supp.2d 170 (¶150 App. Div. 1987), certif. den. 108 N.J. 208 (1987); Lower Camden Reg.

ORDER

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

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996