

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOOD-RIDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-84

WOOD-RIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Wood-Ridge Board of Education for a restraint of binding arbitration of a grievance filed by the Wood-Ridge Education Association. The grievance alleges that the parties' collective negotiations agreement was violated when two teachers in the high school were directed to begin and end their work day earlier than the time set forth in the agreement. The Commission restrains arbitration to the extent the grievance challenges the Board's right to assign two teachers to student supervision duties prior to the start of the contractual work day. The Commission declines to restrain arbitration over issues concerning release time or other compensation for performing the duty; workload; and methods of selecting qualified staff to perform the duty. How this non-teaching duty is assigned is mandatorily negotiable and disputes over the allocation of the duty are legally arbitrable.

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, Mark T. Janeczko, attorney

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, on the brief)

DECISION

On February 15, 2000, 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 alleges that the parties' collective negotiations agreement was violated when two teachers in the high school were directed to begin and end their work day earlier than the time set forth in the agreement.

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

The Association represents teachers and certain other regularly employed personnel. The Board and the Association are parties to a collective negotiations agreement effective from July

1, 1996 through June 30, 1999. The grievance procedure ends in binding arbitration.

Article VII, B.1. of the agreement provides:

The high school teacher day shall be 7:40 a.m. to 2:49 p.m. The daily teaching load in the high school shall not be more than six (6) teaching periods and shall not exceed five (5) hours of pupil contact time per day. Generally, teachers will be assigned five (5) actual teaching periods and one (1) supervised study hall or equivalent assignment. Where programming and staffing require that teachers be assigned six (6) teaching periods, these teachers will not be assigned study hall. When possible, six (6) teaching period assignments will be rotated annually within affected departments.

Beginning in June 1999, for security reasons, the Board decided to limit student access into the buildings until the teachers arrived at 7:49 a.m. Prior to 7:49 a.m., only students attending supervised breakfast in the cafeteria would be permitted inside the building.

In October 1999, the Board received several parental complaints about the new procedure. Parents were concerned that students had no access to teachers who were available before the school day for extra help and also that students who did not choose to attend supervised breakfast would have to wait outside in inclement weather.

To address the concerns, the Board asked for two teacher volunteers to monitor the high school's main entrance for nineteen minutes each morning from 7:30 a.m. to 7:49 a.m. in order to verify that students entering the building had legitimate reasons

for being there. These teachers were allowed to leave nineteen minutes early at 2:30 p.m. Two teachers initially volunteered, but later withdrew. The Board then assigned two teachers to the duty and required them to begin and end their work day nineteen minutes earlier.

On November 15, 1999, the Association filed a grievance contesting the change in hours. The grievance was denied at all levels. The Association notified the Board that it was moving the grievance to arbitration and seeking, in addition to a return to the contractual work hours, compensation at the rate of \$25.53 per hour for each teacher for the time they have been working outside of the contractual hours. On January 19, 2000, the Association filed a formal demand for arbitration alleging a unilateral alteration of starting time for certain teachers and seeking restoration of the contractual hours and monetary compensation. This petition ensued.

The Board asserts that this assignment is within its managerial prerogative to ensure student safety and security and to allow students to be able to obtain remediation assistance before the beginning of the regular school day from those teachers who choose to be available.

The Association asserts that work schedules are mandatorily negotiable. It contends that the Board may have the right to have the doors open before the teachers arrive, but it does not have the right to establish new working conditions unilaterally.

The Association urges dismissal of the petition without reaching the merits of the negotiability issue. The majority representative argues that agreements involving governmental entities are governed by the same laws as all other contracts. Their creation and enforcement, the Association maintains, are protected by the United States (Art. I, ¶10) and New Jersey (Art. 4, §7, ¶3) Constitutions. The Association asserts that the Board's action breaches a freely negotiated contract and urges us not to restrain arbitration and allow the Board to avoid its contractual pledge.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual merits of this grievance or any 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]

Initially we note that in Ridgefield Park and other subsequent decisions, the courts of our state have declined to allow enforcement, through binding arbitration, of collective negotiations agreements where the subject of the arbitration demand is outside the legal scope of negotiations. This has been the case even where, as in Ridgefield Park, the contract specifically addressed the subject matter in dispute, there both voluntary and involuntary teacher transfers. 78 N.J. at 150-151. Accord City of Jersey City v. Jersey City POBA, 154 N.J. 555, 571 (1998). We therefore decline to dismiss the petition.

In Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992), we reviewed the case law addressing the negotiability of non-teaching duties relating to student safety:

In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977), holds that teachers may negotiate over having to perform non-teaching duties. But certain non-classroom assignments relating to student safety, security and control are not mandatorily negotiable. The method of distributing these assignments and compensation

for performing them are mandatorily negotiable and arbitrable issues. See Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd App. Div. Dkt. No. A-2131-88T5 (10/12/89). However, regardless of the type of duty assignment involved, reductions in preparation time and increases in workload caused by the substitution of a duty period for a preparation period are mandatorily negotiable. Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82). Thus, maintenance of contractual preparation time guarantees and workload ceilings may be enforced through grievance arbitration. See, e.g., Newark Bd. of Ed., P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), recon. den. P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80). [Id. at 404]

A school board has a managerial prerogative to assign teaching staff members to supervise students before and after school. Bergenfield Bd. of Ed., P.E.R.C. No. 99-100, 25 NJPER 286 (¶30120 1999); Perth Amboy Bd. of Ed., P.E.R.C. No. 98-137, 24 NJPER 271 (¶29129 1998); Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984); Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981). We therefore restrain arbitration to the extent the grievance contests that managerial right.


We will not bar arbitration of any issues concerning release time or other compensation for performing the duty, workload, and methods of selecting qualified staff to perform the duty. How this non-teaching duty is assigned is mandatorily negotiable and disputes over the allocation of the duty are legally

arbitrable. See, e.g., Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER 758 (¶17286 1986); East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

ORDER

The request of the Wood-Ridge Board of Education for a restraint of arbitration is granted to the extent the grievance challenges the Board's right to assign two teachers to student supervision duties prior to the start of the contractual work day. The request is otherwise denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: June 29, 2000
Trenton, New Jersey
ISSUED: June 30, 2000