

P.E.R.C. NO. 88-128

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ASBURY PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-3

ASBURY PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Asbury Park Education Association against the Asbury Park Board of Education. The grievance alleged the Board violated the parties' agreement when it assigned guidance counselors to cover classes of absent teachers. The Commission finds that the directive is a managerial prerogative.

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Appearances:

For the Petitioner, Murray and Granello, Esqs.
(Robert E. Murray, of counsel; Cherie L. Adams, on the
brief)

For the Respondent, Chamlin, Schottland, Rosen, Cavanagh &
Uliano, Esqs. (Thomas W. Cavanagh, Jr., of counsel;
Robert P. McKeivitt, on the brief)

DECISION AND ORDER

On July 10, 1987, the Asbury Park Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of arbitration of a grievance filed by the Asbury Park Education Association ("Association"). The grievance alleged that the Board violated the collective negotiations agreement and the job descriptions of guidance counselors when it assigned them to cover classes of absent teachers.

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

Article I of the 1985-88 collective negotiations agreement recognizes the Association as the exclusive representative of all certified members of the professional staff including guidance counselors and certain non-professional employees. The grievance procedure ends in binding arbitration.

On October 18, 1985, the Association filed a grievance which protested the Board's decision to assign guidance counselors to cover the classes of absent teachers. The grievance alleged that the Board had changed the guidance counselors' job description. No specific article was cited. The Association sought to have the guidance counselors' names removed from the class coverage list and to require that the Board refrain from assigning guidance counselors to cover the classes of absent teachers.

The Board denied the grievance and the Association demanded binding arbitration. An arbitrator was selected and a hearing was held on May 7, 1987. 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. [78 N.J. at 154]

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 403-404]

The Association argues that the Board is simply trying to save money by not hiring substitutes. Whether or not to hire substitutes is a management prerogative. See Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987); Edison Tp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100, 101 (¶14055 1983); Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94, 95 (¶14051 1983); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682, 687 (¶12308 1981); Fairview Bd. of Ed., P.E.R.C. No. 80-32, 5 NJPER 400, 401 (¶10207 1979); West Paterson Bd. of Ed., P.E.R.C. No. 80-17, 5 NJPER 377,

378 (¶10192 1979); Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303, 304 (¶10164 1979). In Sayreville Bd. of Ed., P.E.R.C. No. 84-74, 10 NJPER 37 (¶15021 1983), guidance counselors were assigned to teach career development classes, which the Commissioner of Education held within the scope of their certification. We held that an arbitration award directing the Board to negotiate with the Association over a salary increase was within the scope of negotiations. See also Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd App. Div. Dkt. No. A-1551-86T8 (1987), pet. for certif. pending. However, having the guidance counselors teach the classes was non-negotiable. Here the relief sought is not compensation, but relief from the assignment. Arbitration will be restrained.

ORDER

The request of the Asbury Park Board of Education for a restraint of binding arbitration 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 Bertolino and Reid abstained.

DATED: Trenton, New Jersey
May 25, 1988
ISSUED: May 26, 1988