

P.E.R.C. NO. 96-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. SN-95-113

CITY ASSOCIATION OF SUPERVISORS
AND ADMINISTRATORS, A.F.S.A./AFL-CIO, LOCAL 20,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission declares that the subject matter of a grievance filed by the City Association of Supervisors and Administrators against the Newark Board of Education is within the scope of negotiations. The Commission therefore declines to restrain binding arbitration. The grievance seeks payment of extra compensation to department chairpersons who are assigned to perform scheduling duties normally performed by scheduling administrators or vice-principals. The Commission holds that this compensation claim is mandatorily negotiable and 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, Anthony J. Sciarrillo, attorney
(Anthony J. Sciarrillo, of counsel)

For the Respondent, Marvin L. Comick, General Counsel
(Charles I. Auffant, Associate Counsel)

DECISION AND ORDER

The City Association of Supervisors and Administrators, A.F.S.A./AFL-CIO, Local 20 ("CASA") has petitioned for a scope of negotiations determination and the Newark Board of Education has cross-petitioned. The parties dispute whether a grievance that CASA seeks to submit to binding arbitration is legally arbitrable. The grievance seeks payment of extra compensation to department chairpersons who were assigned to perform scheduling duties normally performed by scheduling administrators or vice-principals.

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

CASA represents the Board's administrative personnel, including department chairpersons and vice-principals. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

On December 13, 1993, CASA filed a grievance. The grievance asserted that department chairperson Ted Pinckney was entitled to receive extra compensation for performing the scheduling duties of a vice-principal at West Kinney Alternative High School from August 24, 1993 to the date the grievance was filed. The Board denied the grievance and CASA demanded arbitration.

On October 5, 1994, the parties entered a stipulation settling this grievance. The stipulation stated that Pinckney would receive the difference between his salary as department chairperson and the comparable salary of a vice-principal for the time spent performing scheduling duties; the Board and CASA would meet to determine whether other department chairpersons were similarly situated; if Pinckney and other department chairpersons continued to perform scheduling duties, they would be paid at a vice-principal's rate; and the arbitration panel would retain jurisdiction to resolve any dispute over implementing the settlement.

A dispute arose over whether the parties' contract and settlement agreement obligated the Board to pay department chairpersons extra compensation for scheduling duties performed during the school year. Those duties include providing schedules for new and transfer students and maintaining monthly registers. The Board took the position that its obligation was limited to

paying for work performed during the summer recess when department chairpersons devoted all their time to preparing the master schedules. CASA then moved to reopen the arbitration proceeding.

On October 24, 1994, an arbitration hearing was held. The arbitration panel consisted of a neutral arbitrator, a CASA-appointed arbitrator, and a Board-appointed arbitrator. At the outset of the hearing, the Board moved to postpone the arbitration proceeding until it filed a scope of negotiations petition and received a Commission decision. That motion was denied and the Board's attorney and the Board-appointed arbitrator then left the hearing. The hearing proceeded without them.

On October 27, 1994, the two remaining panelists issued an award in CASA's favor. The award ordered the Board to pay Pinckney and the department chairpersons at a secondary vice-principal's rate for the scheduling duties they had performed and would continue to perform during the school year. The award did not prohibit (and CASA does not seek to prohibit) the Board from assigning scheduling duties to department chairpersons.

On November 4, 1994, the Board petitioned for a scope of negotiations determination. It asserted that the arbitration award was outside the scope of negotiations. On March 24, 1995, we dismissed that petition as untimely pursuant to Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983).

While its first scope petition was pending, the Board also pursued a Superior Court action to have the award vacated. CASA

moved to have the award confirmed. On May 16, 1995, the Honorable Murray Simon, J.S.C. vacated the award.

CASA now seeks to resubmit its grievance to binding arbitration. The petition and cross-petition ensued.

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 the grievance or any contractual defenses the Board may have.

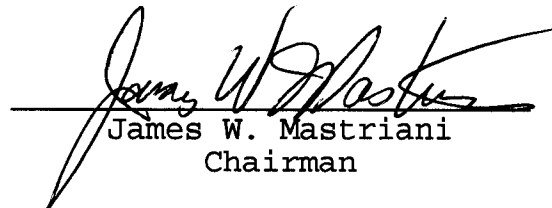
The Board asserts that it has a managerial prerogative to assign scheduling duties to the department chairperson during the school year. CASA, however, accepts the Board's power to make such assignments. It asserts instead that department chairpersons assigned such duties are contractually entitled to receive higher pay for performing scheduling duties normally performed by employees in higher positions -- scheduling administrators/vice principals -- at other schools. The Board responds that this contractual claim is specious because there is no such higher job title in this district or within the parties' collective negotiations agreement and the contract instead assumes that administrators will perform scheduling

duties. The Board's contentions, however, are contractual defenses that go to the merits of the grievance and thus are outside our jurisdiction. Ridgefield Park. We hold that CASA's compensation claim is legally arbitrable. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989); Woodstown-Pilesgrove Reg. Dist. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); Borough of Pittman, P.E.R.C. No. 82-50, 7 NJPER 678 (¶12306 1981).

ORDER

The request of the City Association of Supervisors and Administrators for a declaration that the subject matter of its grievance is within the scope of negotiations is granted. The request of the Newark Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: November 27, 1995
Trenton, New Jersey
ISSUED: November 28, 1995