I.R. NO. 85-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPATCONG BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-85-53

HOPATCONG EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the Commission, denies the Hopatcong Board of Education's application for interim relief seeking a stay of arbitration of a grievance filed by the Hopatcong Education Association pending the Commission's final decision. The grievance asserted that the Board violated its agreement with the Association when it required an additional 20 minutes per day of instructional time for elementary school teachers. The Chairman finds that the Board failed to establish a substantial likelihood of success on the merits of its claim or that irreparable harm would occur if the requested relief were not granted.

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Appearances:

For the Petitioner, Rand & Algeier, Esqs.
(Ellen Bass, of Counsel)

For the Respondent, Bernard Lelling, UniServ
Representative, New Jersey Education Association

DECISION AND ORDER

On November 26, 1984, the Hopatcong Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission"). The Board seeks a permanent restraint of binding arbitration of a grievance filed by the Hopatcong Education Association (the "Association") on September 19, 1984. The grievance asserts that the Board violated its collective agreement with the Association by increasing teacher workload when it required an additional 20 minutes per day of instructional time for elementary school teachers.

Simultaneously with the filing of the petition, and pursuant to N.J.A.C. 19:14-3.10, the Boardhas also filed an application for interim relief with a proposed order to show cause seeking

a temporary restraint of arbitration pending the final decision in this matter. Arbitration is scheduled for February 12, 1985. A hearing was held before me on February 8, 1985. At that time, with the consent of the parties, I issued an oral decision and advised that I would subsequently enter a written decision and order.

The standard in determing whether to grant such relief is settled. The charging party must establish a substantial likelihood of success on its legal and factual allegations and must demonstrate that irreparable harm will occur if the requested relief is not granted. e.g., Alexandria Township Board of Education, I.R. No. 84-5, 10 NJPER 1 (¶15000 1983).

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

The Association is the majority representative of a unit of teachers and other professionals employed by the Board.[1/] The Board and the Association are parties to a collectively negotiated agreement covering the period July 1, 1983 through June 30, 1985. Article VII(3)(a), which applies to teachers of grades K through 4, provides that no teacher shall be required to report for work earlier than 20 minutes prior to the start of the school day, nor be required to remain in school later than 20 minutes after the

1/ The unit also includes Teachers, Nurses, Librarians, Speech Therapists, Learning Disabilities Teacher Consultants, Media Specialist, Guidance Counselors, Social Workers and Psychologists.

school day. Article VII(3)(b) limits the teacher's day to a maximum of six hours and forty minutes.

Both the Board and the Association agree that prior to the 1984-1985 school year, elementary teachers were required to be present for the entire 20-minute period before and after school. However, this period was utilized for non-instructional purposes. It is undisputed that the Board's change amounted to 20 minutes more of instruction per day for elementary teachers. However, the Board asserts that since the extra instructional time was taken from time in which the teachers had contact with pupils, and did not increase the time the teachers spent in school, its change was not mandatorily negotiable. The Association, which has asserted that the change has cut into duty-free time,argues that the modifications were mandatorily negotiable and arbitrable.

I first consider whether the Board has established a likelihood of success on the merits. I find that it has not.[2/] The grievance alleges that the workload of teachers increased when instructional time increased by 20 minutes per day. It is well-settled that, in the abstract, such matters are mandatorily negotiable. See Burlington County College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Maywood Ed. Ass'n, 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979); In re City of Bayonne Bd. of Ed., P.E.R.C. No. 80-58,

2/ I, of course, do not address the merits of the grievance or the merits of the Board's contractual defense. Whether the Board has a right to increase teacher workload within the limits of the collective agreement is for the arbitrator to decide. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

5 NJPER 499 (¶10255 1979), aff'd App. Div. A-954-79 (1980), pet. for certif. den.; In re Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/20/80); In re 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); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (¶10216 1979); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981); In re Wharton Bd. of Ed., P.E.R.C. No. 83-85, 8 NJPER 570 (¶13263 1982); In re East Newark Bd. of Ed., P.E.R.C. No. 83-123, 8 NJPER 373 (¶13171 1982); and In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶14057 1982). In particular, on virtually the same set of facts, the Appellate Division found an increase in instructional time of 35 minutes to be mandatorily negotiable in Dover Bd. of Ed., supra. In pertinent part, the Court stated:

> The change in the teacher schedule had a significant impact on the terms and conditions of the teachers' employment by increasing their instructional work load. Negotiation would not have substantially encroached on the board's educational objective of improving student reading skills. We affirm PERC's determination that the increase in the teacer work load was mandatorily negotiable and that, in instituting this change unilaterally, the board was guility of an unfair labor practice. See Bd. of Ed. Woodstown-Pilesgrove School v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582, 591 (1980); State v. State Supervisory Employees Association, 78 N.J. 54, 67 (1978); Burlington Cty. Col. Fac. Assoc. v. Bd. of Trustees, 64 N.J. 10, 14 (1973).

Moreover, I note that the Board has claimed that an arbitrator's award might require the Board to shorten the school day for

pupils. That claim, however, goes to the remedy should the arbitrator find a violation and is, at best, speculative, at this stage of the proceedings.

I also do not find that the Board will suffer irreparable harm if the stay is not granted. I simply cannot conceive how the presence at a hearing constitutes "irreparable harm." This is especially the case here since the full Commission will decide the petition on the merits at either its February or March meetings, and the Board will continue to have available appropriate avenues to contest an adverse arbitration award.

ORDER

The Board's application for interim relief seeking a stay of arbitration is denied.

BY ORDER OF THE COMMISSION

JAMES W. MASTRIANI
Chairman

DATED: TRENTON, NEW JERSEY
February 8, 1985