

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE BOROUGH  
OF VERONA,

Petitioner,

Docket No. SN-76-33

-and-

VERONA EDUCATION ASSOCIATION,  
Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board, the Commission rules on the negotiability of the decision to replace a non-teaching duty period with a classroom teaching period. The Association sought to arbitrate this change as a violation of the collective negotiations agreement between the parties. The Board sought to prevent arbitration on the ground that the matter involved was outside the scope of collective negotiations. The Commission determines that the decision of the Board to replace a non-teaching duty period of one of its teachers with a classroom teaching period, an action that did not result in an increase in the length of that teacher's work day, is a major educational policy decision and is a permissive but not a required subject of negotiations. In denying the petitioned for restraint of arbitration the Commission rules that a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties for the period July 1, 1975 to June 30, 1976.

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Appearances:

For the Petitioner, Booth, Bate, Hagoort, Keith  
and Harris, Esqs. (Mr. George H. Buermann, of Counsel)

For the Respondent, Mandell, Wysoker, Sherman, Glassner,  
Weingartner and Feingold, Esqs. (Mr. Jack Wysoker and  
Mr. Richard Greenstein, of Counsel)

For the Amicus Curiae, N. J. School Boards Association,  
Mr. William J. Zaino and Mr. John T. Barbour (Mr. John T.  
Barbour, on the Brief)

DECISION AND ORDER

On January 29, 1976, the Board of Education of the  
Borough of Verona (the "Board") filed a Petition for Scope of  
Negotiations Determination with the Public Employment Relations  
Commission (the "Commission") seeking a determination as to whether  
a certain matter in dispute between the Board and the Verona Edu-  
cation Association (the "Association") is within the scope of  
collective negotiations.<sup>1/</sup>

This dispute arose initially as a grievance filed by  
the Respondent and Mr. Norman Branin pursuant to the grievance/

<sup>1/</sup> N.J.S.A. 34:13A-5.4(d) provides: "The commission shall at all  
times have the power and duty, upon the request of any public  
employer or majority representative, to make a determination  
as to whether a matter in dispute is within the scope of col-  
lective negotiations. The commission shall serve the parties  
with its findings of fact and conclusions of law. Any deter-  
mination made by the commission pursuant to this subsection  
may be appealed to the Appellate Division of the Superior Court."

arbitration provisions of the agreement between the Board and the Association. Respondent seeks to arbitrate the matter in dispute, and the Board, through the within petition, seeks to prevent arbitration on the ground that the matter involved is outside the scope of collective negotiations. A request by the New Jersey School Boards Association for leave to appear as amicus curiae was granted by the Commission.

There is no dispute as to the relevant facts. Mr. Branin is employed by the Board as an Industrial Arts teacher at the Henry B. Whitehouse Middle School. During the school years 1972-73, 1973-74 and 1974-75 he taught five class periods a day, and was assigned one non-teaching duty period. In May 1975, the Board ordered that commencing in September 1975, Mr. Branin would teach a sixth classroom period per day in lieu of the duty period. The grievance, filed pursuant to the July 1, 1975 to June 30, 1976 collective negotiations agreement between the parties, alleged that the Board violated its contractual duty to negotiate any change in terms and conditions of employment, and the Respondent wants an arbitrator to decide whether the contract has been breached.

In its brief the Board argues that pursuant to the statutory authority granted to boards of education to make rules for the governance of the schools, decisions such as the addition of classroom periods within the existing school day are managerial prerogatives and not subject to the duty to negotiate. By substituting a classroom period for a non-teaching duty period, the

Board claims to be able to reduce class size, an educational policy move that is solely within the prerogative of the Board.

The amicus brief makes the same basic points as the Board's brief, and additionally argues that educational policy decisions are not arbitrable. A plea is also made for the Commission to abandon its classification of items as being permissively negotiable, and to determine that anything which is not mandatorily negotiable is thereby a managerial decision specifically delegated by the Legislature to school boards and is not legally negotiable. The Commission is also asked to reverse itself as to decisions stating that the impact or effect of non-mandatorily negotiable items may be mandatorily negotiable.

It is the Respondent's contention that Mr. Branin's work load has been changed, and that work load is a term and condition of employment and is, therefore, mandatorily negotiable and arbitrable.

The Commission believes that its decision in In re North Plainfield Education Association, P.E.R.C. No. 76-16, 2 NJPER 49, is controlling on the negotiability aspect of this case. In North Plainfield, the Board of Education ordered the end of a writing conference period in which a teacher worked with one student, and added a regular classroom period. The Commission held that the decision to replace the writing conference with a classroom period was an educational policy decision, and thus not a mandatory subject of negotiations. However, nothing was found to bar negotiations, thereby placing this subject in the

permissive category. Moreover, it was found that the decision might impact on or affect terms and conditions of employment such as work load, and to that extent the impact or affect was mandatorily negotiable.

Herein the facts are virtually on all fours with North Plainfield, supra. We note particularly that there has been no increase in the length of Mr. Branin's work day, but rather the Board substituted one assignment for another within that scheduled work day. Consequently, as in that case, we find the Board's decision to be a permissive subject of negotiations, but any impact on terms and conditions of employment must be negotiated.<sup>2/</sup>

There remains the question of arbitrability. We note the arguments presented by the Board and the amicus in their briefs, relying upon Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17, (1973) for the proposition that only mandatory subjects of negotiations are arbitrable. As analyzed fully in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 2 NJPER \_\_\_\_\_, we have determined that either a required or permissive subject of negotiations is

<sup>2/</sup> As to the contention in the amicus brief that the Commission should reconsider its recognition of permissive subjects of negotiation, this same argument was advanced in the recently decided case of In re City of Jersey City, P.E.R.C. No. 77-33, 2 NJPER \_\_\_\_\_ (1977) where we also discussed the general negotiations obligation regarding terms and conditions of employment. The question was fully considered therein and the Commission reiterated its earlier holdings that the trichotomy of mandatory, permissive and illegal subjects of negotiation best reflects the intent of the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-1 et seq. Cf. N.J.A.C. 19:13-3.7.

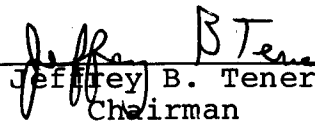
arbitrable if the dispute arose under a contract entered into after the effective date of Chapter 123 of the Public Laws of 1974. As the Board's decision herein has been held to be a permissive subject which arose under a post-Chapter 123 agreement, it is arbitrable if otherwise arbitrable under the contractual agreement between the Board and the Association.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the above discussion, the Public Employment Relations Commission determines that the decision to replace a non-teaching duty period with a classroom teaching period is a permissive subject of negotiations and a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties for the period July 1, 1975 to June 30, 1976.

It is further ordered that the petitioned for restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.  
Commissioners Hipp and Hurwitz abstained.

DATED: Trenton, New Jersey  
February 17, 1977

ISSUED: February 18, 1977