

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS EDUCATION
ASSOCIATION,

Petitioner,

Docket No. SN-76-49

-and-

PARSIPPANY-TROY HILLS BOARD OF
EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Education Association, the Commission rules on the negotiability of changes made by the Board of Education in the parent-teacher conference program in the district. The Association sought to arbitrate these changes as a violation of the collective negotiations agreement between the parties. The Commission determines that the decision of the Board to change its parent-teacher conference program is a major educational policy decision and is a permissive but not a required subject of negotiations. The Commission further finds that any changes in the parent-teacher conference program which change the working hours or the workload of the employees represented by the Association are required subjects of negotiations. The Commission rules that all of these matters may be submitted to arbitration if they are otherwise arbitrable under the terms of the parties' collective negotiations agreement.

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EDUCATION,

Respondent.

Appearances:

For the Education Association, Goldberg, Simon &
Selikoff, Esqs. (Mr. Gerald M. Goldberg, of Counsel,
Mr. Paul N. Gilbert, On the Brief)

For the Board of Education, Murray, Meagher and
Granello, Esqs. (Mr. Malachi J. Kenney, of Counsel
and On the Brief)

DECISION AND ORDER

On June 14, 1976, the Parsippany-Troy Hills Education Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute with the Parsippany-Troy Hills Board of Education (the "Board") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended (the "Act").^{1/}

^{1/} The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations appears in the Act at N.J.S.A. 34:13A-5.4(d):

"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

(Continued)

The dispute involves a change made by the Board in the parent-teacher conference program in the district. The Association states that the Board increased the yearly schedule of parent-teacher conferences from two to three per year and increased the number of days of conferences from three to four during each of the conference periods. The change, it is claimed, will require the teachers who are represented by the Association to work additional hours in the late afternoon and evening.

The dispute arose when the Association sought to have these changes arbitrated pursuant to a grievance/binding arbitration clause contained in the collective negotiations agreement entered into on October 1, 1975 between the parties and which covers the period from July 1, 1975 through June 30, 1977. The Association grieved the changes as a violation of the agreement, but the Board prevented the grievance from reaching binding arbitration by declining to enter into a joint request with the Association for a panel of arbitrators from the American Arbitration Association as required by the parties' agreement. The Board has filed a petition with the Commissioner of Education, a copy of which the Association attached to the instant scope petition, seeking a declaratory judgment that the instant dispute and certain other matters, not contained in the Association's scope petition herein, are within the Board's prerogatives under the Education Laws (Title 18A).

1/ (Continued) is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

Both the Board and the Association have filed briefs in support of their respective positions. The Association contends that the decision to restructure the parent-teacher conference program is mandatorily negotiable as a change in terms and conditions of employment and specifically in the teachers' hours of work. In the alternative, the Association argues that the Board's decision to change the program should be found to be a "permissive" subject for negotiations, with any resultant "impact" on terms or conditions of employment being a mandatory subject for negotiations. Whether the Board's decision is determined to be either a mandatory or permissive subject for negotiations, the Association contends that it can be the subject of an arbitration proceeding, assuming contractual arbitrability.

The Board argues that its decision to restructure the parent-teacher conference program is a major educational policy decision and is not subject to a mandatory negotiations obligation. Additionally, the Board states that in the absence of proof that its decision to restructure the program has an impact on terms and conditions of employment, the Board is not obligated to negotiate any "supposed" impact flowing from this managerial decision.

The parties appear to be in disagreement as to the actual effects of the restructuring on the teachers' work day. While conceding that the new program will require teachers to work hours in excess of those previously required, on one day, the Board contends that the primary effect of the new program is to bring

about a substitution of one type of professional duty -- parent conferences -- for another -- teaching classes -- without increasing the length of the working day.^{2/}

The Association, in its petition and brief, alleges that the teachers, under the new program, are required to work during what would otherwise be "non-school" and "non-working" hours. It is not clear from the Association's submissions whether these terms relate to hours beyond the teachers' required workday, or hours when students are not in class but teachers are otherwise required to be present, or both.

Without deciding which view of the program is accurate, we can nevertheless determine the questions of negotiability raised by the parties.

To the extent that the restructuring of the program would result, on certain days, in a substitution of one type of teaching duty for another, without increasing the length of the teacher's workday, our prior determination in In re North Plainfield Education Association, P.E.R.C. No. 76-16, 2 NJPER 49 (1976), is controlling.

There we held that a board's decision to eliminate a writing conference taught by English teachers and to substitute an additional teaching period, without increasing the length of workday, was a basic educational policy decision not subject to

^{2/} The Board, relying on certain provisions of the agreement and concepts of waiver, states that it has no further obligation to negotiate the extra hours on the one day in question. These arguments, however, are not relevant to the negotiability determination we are called upon to make herein, but rather are addressed to questions of contractual arbitrability and the merits of the Association's grievance.

a mandatory duty to negotiate. Finding no specific statutory proscription against negotiations regarding the board's decision, we concluded that the matter was a permissive subject for negotiations. Additionally, we held that to the extent the board's decision had an impact on terms and conditions of employment, e.g. workload, such impact was a required subject for negotiations.

Similarly, we find herein that the Board's decision to have its teachers devote portions of several school days to parent conferences in lieu of teaching class to be a major educational policy decision. As in North Plainfield, we find nothing which would prohibit the parties from holding negotiations on this subject and thus hold it to be a permissive subject for negotiations. To the extent, however, that the Board's decision to restructure the parent conference program and thus the workday has an impact on terms and conditions of employment, such impact is a mandatory subject for negotiations.^{3/}

A different result obtains with respect to the Board's restructuring of the parent-teacher conference program when that change directly and measurably increases the length of the workday of the teachers. In such a situation, the decision to hold a parent-teacher conference program is a decision to increase the working hours of employees. As such, it is a required subject

^{3/} As noted supra., at p. 2 the Board contends that impact negotiations cannot be ordered unless there is proof such impact exists. That issue is not before us in this scope of negotiations proceeding although it may be relevant in an arbitration or judicial proceeding relating to contract interpretation or enforcement.

for negotiations. See Board of Education of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973).

Thus, using the teacher's workday as a departure point, we find that the Board's decision to restructure its parent-teacher conference program is mandatorily negotiable as it relates to hours of employment and workload while it is permissively negotiable as it relates to an educational policy decision regarding the structure of the workday and of the parent-teacher conference program.

However, we determine that the entire dispute may be submitted to binding arbitration, if otherwise arbitrable. Recently, in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 2 NJPER ____ (1976) we held that if a dispute arises under a grievance/arbitration procedure contained in a contract entered into after the effective date of the amendments to the Act contained in L. 1974, c. 123 (January 20, 1975), the matter may be submitted to arbitration if it involves either a permissive or required subject of negotiations. As the parties' contract was executed on October 1, 1975, and as we have found the instant dispute to concern both mandatory and permissive subjects of negotiations, the parties are therefore free to pursue this matter to arbitration if it is otherwise arbitrable under the parties' collective negotiations agreement.^{4/}

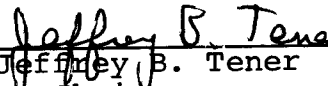
ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7,

^{4/} See In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

the Public Employment Relations Commission hereby determines that the decision of the Parsippany-Troy Hills Board of Education to change its parent-teacher conference program is a major educational policy and is a permissive but not a required subject of negotiations. However, any changes in that program which change the working hours or the workload of the employees represented by the Parsippany-Troy Hills Education Association are required subjects of negotiations. All of these matters may be submitted to arbitration if they are otherwise arbitrable under the terms of the parties' collective negotiations agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision
Commissioners Hipp and Hurwitz did not participate in this matter.

DATED: Trenton, New Jersey
December 21, 1976
ISSUED: December 22, 1976