

P.E.R.C. NO. 91-91

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-21

LONG BRANCH SCHOOL  
EMPLOYEES ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Long Branch School Employees Association against the Long Branch Board of Education. The grievance asserted that because teacher aides had been laid off, teachers would be required to take on additional duties. The Commission finds that while the teachers' supervision duties may be more taxing because of the loss of the aides, that change is a direct result of a RIF and is not arbitrable. Similarly, clean-up duties performed by custodians and the assignment of cafeteria supervision to a guidance counsellor flowed directly from the lay off and do not involve significant, measurable increases in workload.

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Appearances:

For the Petitioner, McOmber & McOmber, attorneys  
(J. Peter Sokol, of counsel)

For the Respondent, Chamlin, Rosen, Cavanaugh, & Uliano,  
attorneys (Joseph J. Colao, of counsel)

DECISION AND ORDER

On October 18, 1990, the Long Branch Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Long Branch School Employees Association.

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

The Association represents a unit of professional and non-professional employees. The Board and the Association entered into a collective negotiations agreement effective July 1, 1989 to June 30, 1992.

In April 1990, the Board decided to lay off eight teacher aides. On June 7, the Association filed a grievance asserting that

the action violated Article 8, Section H, paragraph 6. This paragraph reads:

The Board agrees that it will employ not less than eight (8) lay persons as Teacher Aides for the purpose of assisting in the supervision of students in the Middle and High School Cafeterias during the students' lunch periods.

The grievance claimed that teachers will be required "to take duties as a result of loss of the 8 people."

When the 1990-91 school year began, there was no change in the number of teachers assigned to supervise the high school cafeteria in two out of three lunch periods. In the other lunch period one fewer teacher was assigned than in the two prior years. At the middle school there is one additional teacher assigned in one of the lunch periods. There is no change in the other middle school lunch periods. No teachers appear to have lost any duty-free time.<sup>1/</sup> At least one guidance counselor was among the "teachers" assigned to supervise each lunch period at the high school. The counselor had previously used the time for normal counseling duties. Cleanup duties previously performed by the aides are now done by custodians. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

The boundaries of our scope of negotiations jurisdiction are narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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<sup>1/</sup> It appears from duty rosters covering the last three school years that non-teaching duty assignments last the whole school year.

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 layoff violates the agreement and requires teachers to perform additional non-teaching duties. It asserts that the frequency of these assignments and the compensation to be paid are severable from the decision to terminate the aides and have teachers perform additional duties. Citing In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif.

den. 81 N.J. 292 (1979), the Board argues that the assignment of the additional duties is the direct "impact" of the reduction in force and is not mandatorily negotiable or arbitrable. It disputes that the grievance seeks any remedy other than the rehiring of the aides.

The grievance challenges the Board's decision to reduce the size of its work force. That decision is not mandatorily negotiable. We will restrain arbitration over that aspect of the grievance.

The grievance also challenges the additional supervision duties assigned to teachers because of the layoff. Under the facts of this case, the assignment of these duties is not mandatorily negotiable. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd App. Div. Dkt. No. A-2131-88T5 (10/12/89). Here, no duty-free time has been lost. While the teachers' supervision duties may now be more taxing because of the loss of the aides, that change is a direct result of the RIF and is not arbitrable. Maywood. Similarly, the cleanup duties performed by the custodians and the assignment of cafeteria supervision to a guidance counselor flow directly from the layoff of aides and do not involve significant, measurable increases in workload.<sup>2/</sup> Contrast

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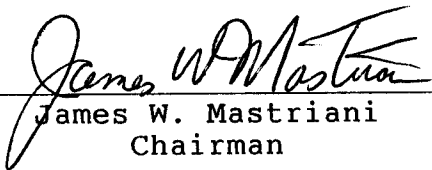
<sup>2/</sup> The Association has not identified any issues pertaining to the frequency of cafeteria supervision assignments or their rotation among unit members. The rosters submitted to us indicate that the assignments are effective for the whole school year.

Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987);  
see also Spotswood Bd. of Ed., P.E.R.C. No. 81-109, 7 NJPER 159  
(¶12070 1981).

ORDER

The Board's request for a restraint of arbitration is  
granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Johnson, Smith and  
Wenzler voted in favor of this decision. None opposed.  
Commissioners Bertolino and Regan abstained from consideration.

DATED: April 19, 1991  
Trenton, New Jersey  
ISSUED: April 19, 1991