

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK REGIONAL HIGH  
SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-57

RED BANK REGIONAL  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines, in part, and grants, in part, a request by the Red Bank Regional High School Board of Education to restrain binding arbitration of a grievance which the Red Bank Regional Education Association filed against it. The grievance alleged that the Board violated the collective negotiations agreement with the Association when, instead of allowing teachers unassigned professional time, it assigned Sandra Portera to tutor a student and assigned business department teachers to rotate coverage of the typing lab. The Commission holds that the grievance is arbitrable to the extent it alleges that the Board unilaterally assigned Portera an extra tutorial, but was not arbitrable to the extent it alleged that the Board unilaterally required business department teachers to continue to supervise the typing lab during their professional time.

The Commission agreed with the Hearing Examiner that the Board unilaterally increased Portera's workload (the parties stipulated that the Hearing Examiner would also function as an arbitrator), but believed the appropriate remedy is for the Board to negotiate over the rate of compensation to be paid Portera and to pay her \$9 per hour pending the completion of negotiations.

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RED BANK REGIONAL  
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Crowell & Otten, Esqs.  
(Robert H. Otten, of Counsel)

For the Respondent, Oxfeld, Cohen & Blunda, Esqs.  
(Mark J. Blunda, of Counsel)

DECISION AND ORDER

The Red Bank Regional High School Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board sought a permanent restraint of binding arbitration of a grievance which the Red Bank Regional Education Association ("Association") had filed against it. The grievance alleged that the Board had violated the collective negotiations agreement with the Association when, instead of allowing teachers unassigned professional time, it assigned Sandra Portera to tutor a student between 2:21 and 2:55 one day per week and assigned a group of

business department teachers to rotate coverage of the typing lab during the same time period for the entire 1982-83 school year.<sup>1/</sup>

After settlement efforts failed, a Notice of Hearing was issued. Hearing Examiner Charles A. Tadduni conducted a hearing. The parties stipulated that the Hearing Examiner, in addition to considering the scope of negotiations issue, would serve as an arbitrator empowered to resolve the underlying merits of the grievance and that his determinations on both the arbitrability and the merits of the grievance could be appealed to the full Commission. The parties then examined witnesses and introduced exhibits.

On May 20, 1986, the Hearing Examiner issued a report recommending that the Commission find the entire grievance arbitrable. H.E. No. 86-56,     NJPER     (¶          1986). He reasoned that the alleged change from professional time to pupil contact time involved the mandatorily negotiable issue of a workload increase.

In his capacity as arbitrator, he issued a separate award on the merits of the grievance and found that the Board had violated the contract. He directed the Board to pay each teacher in accordance with a contractual provision concerning extra work/extra pay and an attached schedule.

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<sup>1/</sup> The Board also sought a restraint of binding arbitration of a second grievance, but that dispute has been settled.

On June 17, after having received an extension of time, the Board filed exceptions. It asserts that the findings of the Hearing Examiner/arbitrator are unsupported by the record; that he erred in how he framed the issues in his arbitration award; that he erred in finding an increase in workload and a change in terms and conditions of employment; and that he erred in directing the Board to pay each teacher in accordance with the extra work/extra pay provision and the attached schedule.

On June 27, the Association filed a response. It asserts that the grievances were arbitrable, that the arbitrator's determinations were reasonably debatable and that his remedy was appropriate.<sup>2/</sup>

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 4-10) are accurate. We adopt and incorporate them here.

We reject the Board's exceptions to the Hearing Examiner's findings concerning the assignment of a tutorial to Sandra Portera. Robinson's testimony that he had held detentions for students and had given them extra help when he deemed it

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<sup>2/</sup> On July 7, the Board, invoking N.J.A.C. 19:14-7.3(f), filed an answering brief. The Association objected to this brief because our regulations only permit answering briefs if cross-exceptions have been filed or leave for an additional brief has been obtained. In addition, the Association objected that the Board had improperly submitted additional evidence in this brief, thus violating N.J.A.C. 19:14-7.2. We agree with these objections and have not considered the Board's answering brief.

necessary or they required it is consistent with his testimony that before the specific and continuing assignments in question here, teachers had decided how to use their professional time in the afternoon. The only time Robinson had received an involuntary assignment, he grieved and the assignment was revoked. The principal's testimony that some teachers were assigned specific areas of supervision during the 2:21 to 2:55 p.m. period is consistent with other testimony that teachers who had not received specific supervisory assignments upon reporting to school and who instead had professional time then would be assigned supervisory tasks in the afternoon; Portera was not in that category since she had received a morning assignment. The record is clear that teachers who had already received specific morning assignments were not given specific tutoring or other supervisory assignments during their afternoon professional time.

We supplement the Hearing Examiner's findings (pps. 8-10) concerning the business department teachers assigned to cover the typing lab. Before the 1982-83 school year, teachers with typing classes had self-generated afternoon coverage of the typing lab. On some occasions, two teachers had opened up two typing labs, even though only two or three students had used them. According to the principal, the typing teachers then proposed that a schedule be generated so that only one teacher would cover one typing lab each day and the business department supervisor complied with this request by posting a schedule. The Association's president and

former grievance chairperson testified that he was told one teacher felt coerced into volunteering. The teachers could switch assignments, could work on other matters while students used the typing lab, or could go to the library if no students showed up to use the lab.

Under all the circumstances of this case, we hold that the grievance was arbitrable to the extent it alleges that the Board unilaterally assigned Portera an extra tutorial. Before the 1982-83 school year, teachers who received homeroom or other specific supervisory assignments upon reporting to duty received professional time at the end of the day, while teachers who had professional time in the morning received specific assignments in the afternoon. In contrast to this practice, Portera was required to teach a student in the afternoon in addition to a supervisory assignment in the morning. Based on the reasons and cases cited by the Hearing Examiner, this extra uncompensated teaching assignment presents an arbitrable issue.

We hold, however, that the grievance was not arbitrable to the extent it alleged that the Board unilaterally required business department teachers to continue to supervise the typing lab during their professional time. Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981) and Fair Lawn Bd. of Ed., P.E.R.C. No. 83-48, 8 NJPER 609 (¶13289 1982) control this aspect of the case. In Wanaque, we restrained arbitration over a grievance alleging that a board required teachers to supervise students

waiting to board buses rather than to use that time as they saw fit professionally for individual pupil educational activities; we reasoned that this assignment simply substituted one type of student supervision for another. In Fair Lawn, we restrained arbitration over a grievance alleging that a board required teachers to supervise students in the hallway after school rather than to use that time as they saw fit professionally; we applied Wanaque and stressed that the board had not required the teaching of any additional classes. Wanaque and Fair Lawn are on point since the typing lab schedule simply involves a specific type of supervision without any additional teaching responsibilities or decrease in contractual preparation time. Accordingly, we will restrain implementation of the arbitrator's award with respect to the business department teachers.

We next consider the merits of the grievance insofar as it alleges that the Board unilaterally assigned Portera an extra tutorial and thus increased her workload. We agree with the arbitrator's analysis and resolution of this issue.

We finally consider the appropriate remedy for the contractual violation concerning Portera. The Hearing Examiner recommended that she be compensated pro rata in accordance with Schedule B, Extra Work-Extra Pay Schedule. This schedule specifies the stipends for designated extra-curricular assignments ranging from athletic and coaching positions to class advisor and chaperone positions, but does not specify the appropriate compensation for a

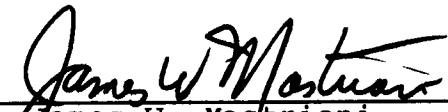
teacher assigned to tutor a student. The Board asserts that the appropriate rate of compensation is the rate paid substitute teachers (\$9 per hour). In light of the absence of a contractually specified rate for tutoring and the Board's position, we will order the Board to negotiate over the rate of compensation to be paid Portera and to pay her \$9 per hour pending the completion of negotiations.

ORDER

The grievance was not arbitrable to the extent it concerns the schedule for typing lab supervision during the 1982-83 school year. Implementation of the arbitrator's award concerning that issue is restrained.

The grievance was arbitrable to the extent it concerns the assignment of an extra tutorial to Sandra Portera during her professional time. The Board's request for a restraint of arbitration over that issue is denied. The grievance is sustained and the Board is ordered to negotiate with the Association over an appropriate rate of compensation for this assignment and to pay Portera \$9 per hour pending completion of these negotiations.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained. Commissioner Reid was not present.

DATED: Trenton, New Jersey  
September 25, 1986  
ISSUED: September 26, 1986



H.E. NO. 86-56

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK REGIONAL HIGH SCHOOL  
BOARD OF EDUCATION,

Respondent,

- and -

Docket No. SN-83-57

RED BANK REGIONAL EDUCATION ASSOCIATION,

Charging Party.

Synopsis

A Commission Hearing Examiner determines that certain assignments to teachers made by the Red Bank Regional High School Board of Education during the 34 minute period after the end of the normal instructional day -- a reading tutorial assignment and a typing lab supervision assignment -- implicate teachers' workload, not educational policy. Accordingly, the Hearing Examiner recommends that the Commission find the increased workload issues raised herein to be negotiable and arbitrable.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 86-56

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK REGIONAL HIGH SCHOOL  
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Docket No. SN-83-57

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Respondent.

Appearances:

For the Petitioner  
Crowell & Otten, Esqs.  
(Robert H. Otten, of counsel)

For the Respondents  
Oxford Cohen & Blunda, Esqs.  
(Mark J. Blunda, of counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (hereinafter the "Commission") on December 29, 1982 by the Red Bank Regional High School Board of Education (hereinafter the "Petitioner" or the "Board"), in which it sought a permanent restraint of binding arbitration of two grievances filed by the Red Bank Regional Education Association (hereinafter the "Respondent" or the

"Association").<sup>1/</sup> In Grievance 83-2, the Association seeks compensation for the Board's assignment of Sandra Portera to tutor a student between 2:21 p.m. and 2:55 p.m., one day per week, from September 1982 through March 1983 and the assignment of a group of teachers in the Business Department to provide typing lab coverage between 2:21 p.m. and 2:55 p.m. on a rotating basis, one day per week, for the entire 1982-1983 school year.

The parties initially filed briefs and reply briefs with the Commission in support of their respective positions on the scope of negotiations issues in January, February and March 1983. In March 1983, both parties requested that an exploratory conference be scheduled herein to assist the parties in reaching an informal resolution of this case. An exploratory conference was conducted in this matter in May 1983, but the parties failed to resolve the instant dispute. Subsequent to the exploratory conference, the Board requested that a hearing be conducted to resolve certain factual issues which had been raised by the parties. The Association opposed the Board's request for a hearing. A Notice of Hearing was issued in this matter on January 18, 1984.<sup>2/</sup>

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<sup>1/</sup> The two grievances were denominated as Grievance 83-1 and Grievance 83-2. Grievance 83-1, which concerned the requirement that teachers be in their homerooms at a specified time each morning, was resolved by the parties subsequent to the hearing. Grievance 83-2 is the subject matter of the instant dispute and is the only one referred to hereinafter.

<sup>2/</sup> At the time of the issuance of the Notice of Hearing, the parties stipulated and agreed that the undersigned Hearing

Pursuant to the Notice of Hearing, a hearing was held on March 22, 1984, in Trenton, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Subsequent to the close of hearing on March 22, 1984, the parties stipulated to the submission of Exhibit C-9 (a copy of the parties' contract for the 1980-82 school years). Following several conversations between counsel for the Board and the Association, it became apparent to the parties that a further factual dispute had arisen concerning an issue in the case which they had thought was not in dispute. Accordingly, in June 1984, the Association requested that the record in this matter be reopened to take further evidence and testimony concerning the newly discovered dispute. An additional hearing date was scheduled on July 16, 1984; that hearing date was twice adjourned and rescheduled until, on September 25, 1984, the Hearing Examiner was informed by counsel that they had resolved the "morning dispute" aspect of this case (Grievance 83-1) and accordingly, a further hearing date was no longer needed. The parties filed post-hearing briefs and reply briefs by March 11, 1985.

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2/ Footnote Continued From Previous Page

Examiner would also serve as Arbitrator of the instant grievance, in the event that the underlying subject matter was found to be within the scope of negotiations. Tr 3-9, 173; Board's brief at 1; Association's brief at 6.

A Petition for Scope of Negotiations Determination having been filed with the Commission and, after hearing and consideration of all record evidence and the briefs filed by the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following findings and determinations.

FINDINGS OF FACT

1. The Red Bank Regional High School Board of Education is a public employer within the meaning of the Act and is subject to its provisions.

2. The Red Bank Regional Education Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The operative collective negotiations agreement between the parties was effective during the term July 1, 1982 through June 30, 1984 (Exhibit C-2).

4. On September 23, 1982, Woodrow Sullivan, the then-President of the Association, filed a grievance (Exhibit C-4) regarding the Board's having assigned teachers to do specific work from 2:21 p.m. to 2:55 p.m. daily with a proposed remedy being that all affected teachers receive written notice that these assignments

are "null and void" (Exhibit C-4).<sup>3/</sup> When Sullivan was requested by the principal of the Red Bank Regional High School, Robert M. Nogueira, to specify the "specific work" involved, he (Sullivan) responded on October 6, 1982, that teachers are on "professional time" between 2:21 p.m. and 2:55 p.m. daily and, thus, the assignment of Sandra Portera by the supervisor of the Basic Skills Improvement Program to tutor a student during that time period is grievable as is the assignment of teachers in the Business Department to cover the typing lab during the same time period (Exhibit C-4). This grievance was ultimately denied on November 19, 1982 by the Board (Exhibit C-4).

5. During the negotiations between the Board and the Association which led to the collective negotiations agreement covering the period from July 1982-June 1984, the parties discussed a Board proposal to extend the teacher day. Eventually, they agreed to extend the teacher day to 2:55 p.m. (a 10 minute addition). Classes still ended at 2:21 p.m. and there was no agreement as to how the post 2:21 p.m. time period was to be used. There was no change in the contractual language in that regard (Tr 96-98).

Teachers who did not have either a morning homeroom or morning duty assignment were given a specific afternoon supervision

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<sup>3/</sup> At the conclusion of the hearing, counsel for the Association added that it also sought compensation for all affected teachers using Schedule "B" of Exhibit C-2, pp 50-52 (Tr 174, 175). To calculate the compensation amount.

assignment from 2:21 p.m.-2:55 p.m., the end of the teacher day (Tr 100). The duty assignments, issued in writing at the start of the school year, included such tasks as patrolling hallways, the commons area, outside building areas and bus duty. Richard Robinson, the President of the Association at the time of the hearing and the successor to Sullivan as president, testified without contradiction that between 2:21 p.m. and 2:55 p.m., there were no other specific teacher assignments made (Tr 101). Rather, this time period was considered "professional time" for those staff members who had either a morning homeroom or morning duty assignment (Tr 97-101), and was used for such things as class preparation, grading papers, meetings with other teachers and guidance counsellors, parent conferences, library research and other scholarly pursuits (Tr 113). It was time which the individual teachers used as they each deemed best within the context of the "professional time" purpose. It was occasionally used for meetings with students to provide extra help, assistance with projects, etc.

6. Principal Nogueira testified similarly that in past years, between 2:21 p.m. and the end of the teachers' work day, teachers had engaged in such activities as duplicating instructional materials, research, meeting with students for remedial enrichment, meeting with parents, guidance counsellors, and the child study team, and meeting with other teachers, etc. (Tr 134).

7. In or around September 1982, reading teacher Portera was assigned by the supervisor of the Basic Skills Improvement

Program to tutor a student who had not passed the National Basic Skills Test (Tr 135). This assignment to tutor was on a one day per week basis for the 34 minute period from 2:21-2:55 p.m. Nogueira, the principal of the high school since 1980, testified that the type of tutoring done by Portera had been done in the past on a voluntary basis by teachers who decided which of their students needed additional instruction. However, such instruction during this time frame had never before been accomplished through the direct assignment by a supervisor as was done in September 1982 (Tr 135, 152). Rather, it appears that when tutoring was done in previous years, it usually came about as the result of an independent, professional judgment made by a teacher that a certain student needed additional instruction of a certain type and a certain duration. Portera performed the one day per week tutoring assignment from the beginning of the school year in September 1982 until some time in March 1983 when this activity ceased (Tr 103). Portera did not receive additional compensation for this tutoring task (Tr 103).

8. Robinson testified that at the commencement of the 1982-83 school year, the Board assigned teachers in the Business Department, on a daily rotational basis, to supervise a typing lab at least one day per week, during the 2:21-2:55 p.m. time period. Students attended the post 2:21 p.m. typing lab to make up missed typing-class time, type homework assignments or for disciplinary detention. This assignment lasted for the entire 1982-83 school



year and ceased thereafter. No extra compensation was paid to these teachers for the performance of this assignment (Tr 102-4, 154).

9. Nogueira testified that the post 2:21 p.m. typing lab assignment was a "self initiated" schedule of coverage by the Business Department teachers to enable students to make up missed typing-class time. He elaborated that in discussions between business department teachers and their supervisors regarding how the post 2:21 p.m. time period would be used, the teachers noted that a part of their post 2:21 p.m. time was spent enabling students to make up missed typing-class time. Thereupon, the Business Department supervisor generated a rotating, typing lab coverage schedule for the 2:21-2:55 p.m. time period (Tr 135-138).

10. Nogueira further testified that typing teachers and teachers in other hands-on courses (mechanical drawing, photography, etc.) had cooperated with each other in previous years to provide classroom coverage for students to make up missed classroom time during the post 2:21 p.m. time period -- albeit on an informal and wholly voluntary basis (Tr 138-140).

11. Robinson testified without contradiction that in 1979 he filed a grievance regarding assignment to be performed after the end of the instructional day (post 2:21 p.m.), namely, writing a study curriculum for a particular course. As a result of the grievance, the Board rescinded the assignment prior to its implementation; no compensation was paid to Robinson for that assignment (Tr 104-108, 123).

12. The 1982-84 collective negotiations agreement (Exhibit C-2) between the parties provides, in part, as follows:

Article II, §F contains a zipper clause (Exhibit C-2 pp. 2-3):

This agreement incorporates the entire understanding of the parties on matters which were or could have been the subject of negotiation. During the term of this Agreement, neither party shall be required to negotiate with respect to any such matter whether or not covered by this Agreement and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or executed this Agreement.

Article II, §G contains a maintenance of benefits clause (Exhibit C-2, p. 3):

Except as this Agreement shall hereinafter otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement shall remain in full force and effect except that proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. The result of such negotiations shall be reduced to writing as a memorandum and made a part of this Agreement.

Article IV, §B contains a management rights clause (Exhibit C-2,, pp. 9-10):

The Board of Education, subject only to the language of this Agreement, reserves to itself full jurisdiction and authority over matters of policy and retains the right, in accordance with applicable law and regulations (a) to direct employees of the school district; (b) to hire, Promote, transfer, assign, and retain employees in positions within the school district and to suspend, demote, discharge, or take other disciplinary action against employees; (b) to relieve employees from duties because of lack of

work, or for other legitimate reasons; (d) to maintain the efficiency of the school district operations entrusted to them; (e) to determine the methods, means, and personnel by which such operations are to be conducted; and (f) to take whatever actions might be necessary to carry out the mission of the school district in situations of emergency. Where policies have been or shall be adopted by the Board of Education in any or all of these areas, questions and issues arising thereunder shall be subject to the grievance procedure.

Article VI, "Teaching Hours and Teaching Load," states, in part, as follows:

A2. The total school day for the 1982-84 school years shall be 7 hours, 10 minutes. The normal work day of ratio personnel, i.e., coordinators and the media specialist shall not exceed 8 hours including lunch. The normal work day of guidance counselors shall be 7-1/2 hours. Guidance counselors shall work either from 7:30 a.m. to 3:00 p.m. or from 8:00 a.m. to 3:30 p.m. The administration shall determine the individual counselor's work assignment. This clause does not preclude evening assignments required of the position or of an emergency nature. Occasionally, teachers may, of necessity, be required to overlap scheduling throughout all periods of the day.

A3. Teachers shall be required to report for duty fifteen minutes before their first teacher assignment and shall remain 34 minutes after the close of their final teacher assignment.

B1. The daily teaching load shall not exceed six assigned periods with no more than four consecutive periods or eight mods without an intervening preparation or lunch period....

C1. Teachers shall have a daily duty-free lunch period of one full period....

E. Classroom teachers shall continue to have one preparation period as presently provided....

DISCUSSION AND ANALYSIS

Grievance 83-2 implicates changes in the terms and conditions of employment of reading teacher Portera and Business Department teachers. Thus, the request for restraint of arbitration must be denied.

It will be recalled that Robinson and Nogueira each testified as to what teachers have done in past years during the post 2:21 p.m. time period at the end of the school day (See Findings of Fact Nos. 5 & 6, supra). A fair reading of their respective illustrations of activities of teachers shows little divergence in the nature of the activities, notwithstanding that all of the examples given do not coincide one with the other. What is clear is that is no regular, assigned instructional or supervisory component was mentioned by either Robinson or Nogueira in their respective descriptions of what teachers did (prior to September 1982) during these 24-34 minutes at the end of each day. Robinson points to faculty meetings, meetings with administration, library research and class preparation for the next day while Nogueira referred to research, meeting with students for enrichment purposes, meetings with parents and guidance counsellors and the like. Both witnesses also referred to some limited instruction of students that occurred during the post 2:21 p.m. time period. However, such student contact was sporadic not regular; was of short duration not 6-9 months in length; and was usually teacher-initiated or resultant from discussions among teachers and guidance counsellors, parents, and/or administrators. However, nowhere in this record was a

specific instance recalled where, prior to September 1982, a teacher was assigned by a superior to instruct or supervise a student on a regular and on-going basis during the 2:21-2:55 p.m. time period.

Given the foregoing, it is plain that when the Board assigned a tutoring responsibility to Portera between September 1982 and March 1983 and rotating assignments in the typing lab to Business Department teachers on a once per week basis, these assignments constituted an increase in teacher-pupil contact time (and therefore, an increase in workload) for the affected teachers. The fact that Nogueira testified that teachers had undertaken such activity on a voluntary basis prior to 1982 does not alter the fact that in the 1982-83 school year, the reading tutorial and typing lab supervision activities were assigned to teachers by members of the administration. Thus, during the 1982-83 school year, the assignments were no longer voluntary, the Board having elected to intervene through its supervisory staff. Portera's assignment was given to her by the supervisor of Basic Skills Improvement Program and the teachers in the typing lab functioned under the direction of the supervisor of Business Education, Allen Morrison.

Before treating the applicable Court and Commission precedent relevant to a resolution of the issue at hand, the Hearing Examiner here makes reference to the pertinent provisions in the collective negotiations agreement, starting with the management rights clause which, it is noted, is "subject to the language of the agreement", and, thus, other express contract provisions must be

examined. The Association points to the "maintenance of benefits" clause in Article II, §G, which incorporates the basic language of section 5.3 of the Act regarding the necessity of negotiating (or arbitrating) proposed new rules or modifications of existing rules governing working conditions prior to their implementation. Clearly, this bears on the issue at hand since there has arguably been a change in the workload of Portera and the typing teachers, i.e., an increase in teacher-pupil contact time. It is true that there has been no increase in the length of the 7-hour and 10-minute school day but, according to Robinson, the 34 minutes after the "final teacher assignment" have been used by teachers in the past for "professional" or "discretionary" time. It is clear that other than those teachers who have been assigned to afternoon supervisory duty (whose status is not in dispute in this case and who enjoy "professional time" during the morning, pre-class period), no teacher has been assigned to either teach or supervise students during the 34 minute afternoon period. It is also true that there has been no change in the daily duty-free lunch period or the preparation period by the conduct of the Board herein. This does not, however, obviate the Association's contention that teacher-pupil contact time was increased for the affected teachers by the Board's assignments for the 34 minutes after the "final teacher assignment" (post 2:21 p.m. time frame). Finally, the agreement provides for binding arbitration of issues submitted to the arbitrator by the parties.

The Board asserts several defenses to the arbitration of Grievance 83-2 such as (1) the assignments were voluntary; (2) the job description for a teacher is more than sufficient to cover the assignments; (3) the Board has bargained for and obtained the additional time at issue; (4) there have been no real changes in the work requirements of teachers and even if there were, they are covered by the Agreement; (5) any changes made were de minimis; (6) the Board has properly exercised its managerial prerogatives and the requirements imposed on the affected teachers are clearly educational in nature. The first four of the Board's defenses are more properly raised in the arbitration forum; they are not normally applicable in a scope of negotiations context. In Ridgefield Park Ed Assn. v. Ridgefield Park Bd/Ed, 78 N.J. 144 (1978) the Supreme Court, quoting directly from a Commission scope of negotiations decision in Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975) said:

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)(emphasis supplied).<sup>4/</sup>

It cannot be gainsaid that working hours, compensation, workload, etc. are terms and conditions of employment which intimately and directly affect the work and welfare of public employees and are, thus, mandatorily negotiable: Englewood Board of Education v. Englewood Teachers Association, 64 N.J. 1, 6 (1973) and Neptune City Board of Education v. Neptune City Education Association, 153 N.J. Super. 406, 410 (App. Div. 1977). Specifically, the issue of workload has been held many times to be mandatorily negotiable and arbitrable. Changing a teacher's assignment from "professional time" -- as it has been described by these parties -- to pupil contact time is an increase in workload and, for 34 minutes, it is one which is not de minimis. As the Commission stated in In re Lincoln Park Board of Education, P.E.R.C. No. 85-54, 10 NJPER 647 (¶15312 1984):

...the Board has substituted a pupil supervision period for a preparation period and has not compensated teachers for this additional pupil contact time. Under the cases we have cited and myriad others, there can be no doubt that this uncompensated increase in pupil contact time presents a mandatorily negotiable issue.  
10 NJPER at 648.

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4/ Even the jurisdiction of the Courts is limited to the issue of whether there is a contractual obligation to arbitrate the dispute at issue; Clifton Board of Education v. Clifton Teachers Association, 154 N.J. Super. 500, 503 (App. Div. 1977).



See also Burlington Co. 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); In re Maywood Ed. Assn., 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979); In re Kingwood Twp. Bd. of Ed., v. Kingwood Twp. Ed. Assn., App. Div. Dkt. No. A-1414-84T7 (1985); In re City of Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd App. Div. A-95-79 (1980), pet. for certif. den. 87 N.J. 310 (1981); 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 (1980); 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 (1982); 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 (¶13262 1982); In re East Newark Bd. of Ed., P.E.R.C. No. 83-123, 8 NJPER 373 (¶13171 1982); In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶13057 1982); South River Board of Education, PERC 83-135, 9 NJPER 274 (1983), aff'd Docket No. A-4669-82T2 (App. Div. 1984); In re Buena Regional School District, P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985); In re Kingwood Township Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); In re Montville Twp. Bd.Ed., P.E.R.C. No. 86-51, 11 NJPER 702 (¶16241 1985).

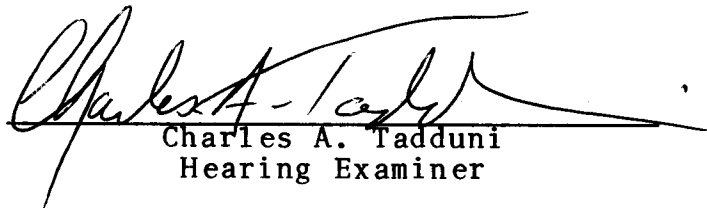
Significantly, in Board of Education of Woodstown-Piles Grove School District v. Woodstown-Piles Grove Education Association, 81 N.J. 582 (1980) the Supreme Court found that a 2-hour increase in the school day before Thanksgiving implicated workload and not educational policy and was, therefore, mandatorily negotiable and arbitrable (See 81 N.J. at 594-596). Similarly, in this case I reject the Board's contention that its actions fall within its managerial prerogatives and therefore are not negotiable. Rather, I conclude that the activities taken here clearly implicate workload, not educational policy, and accordingly, are negotiable and arbitrable.

\* \* \* \* \*

Upon the entire record in this proceeding, the Hearing Examiner recommends as follows.

RECOMMENDED ORDER

The request of the Petitioner, Red Bank Regional High School Board of Education, for a restraint of arbitration of Grievance 83-2 is hereby denied.<sup>5/</sup>

  
 Charles A. Tadduni  
 Hearing Examiner

DATED: May 20, 1986  
 Trenton, New Jersey

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<sup>5/</sup> In accordance with the parties' stipulations and agreement (see footnote 2, supra), the Hearing Examiner has decided grievance 83-2 and submitted that arbitration decision to the parties.