

P.E.R.C. NO. 86-118

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTVILLE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-29

MONTVILLE TOWNSHIP EDUCATION ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Montville Township Board of Education to restrain binding arbitration of a grievance that the Montville Township Education Association filed against the Board. The grievance alleges the Board violated the parties' contract when it increased teachers' workday by 12 minutes. As a remedy, it seeks additional compensation for the increased workday. The Commission holds that the grievance may be submitted to binding arbitration because it involves the mandatorily negotiable issues of compensation and length of the workday.

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Appearances:

For the Petitioner, Rand, Algeier, Tosti, Woodruff & Frieze, Esqs. (Robert M. Tosti, of Counsel, Ellen S. Bass on the Brief)

For the Respondent, Zazzali, Zazzali and Kroll, Esqs., (James R. Zazzali, of Counsel, Paul L. Kleinbaum, on the Brief)

DECISION AND ORDER

On November 13, 1984, the Montville Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a permanent restraint of binding arbitration of a grievance that the Montville Township Education Association ("Association") filed against it. The grievance alleges the Board violated the parties' contract when it increased teachers' workday by 12 minutes. As a remedy, it seeks additional compensation for the increased workday.

On February 25, 1985, the Board filed a request for an evidentiary hearing. On August 29, 1985, the Chairman granted this request and issued a Notice of Hearing.

On November 19, 1985, Hearing Examiner Alan R. Howe conducted a hearing. The Board presented one witness. The parties introduced exhibits and filed post-hearing briefs.

On January 28, 1986, the Hearing Examiner issued his report and recommended decision. H.E. No. 86-35, 12 NJPER 157 (¶17063 1986) (copy attached). He concluded that the grievance could be submitted to binding arbitration because it predominantly involved the mandatorily negotiable issue of compensation for an increase in the length of the workday.

On February 13, 1986, after receiving an extension of time, the Board filed exceptions. It contends, under the Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. 582 (1980) balancing test, the grievance may not be submitted to arbitration. It also contends that the grievance pertains to the "impact" of the decision to reorganize the school day and therefore is not arbitrable. Finally, it contends the increase in the school day was de minimis.

On February 21, 1986, the Association filed its response. It stresses that it does not challenge the right of the Board to reorganize the educational program, but only seeks compensation for the 12 minute increase in the workday.

This grievance may be submitted to binding arbitration. It seeks additional compensation for the 12 minute increase in the workday. It is well-settled that both compensation and the length of the workday are mandatorily negotiable. E.g., Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, 6-7 (1973); Burlington County

College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973);
Galloway Tp. Bd. of Ed. v. Galloway Tp. Assn. of Ed. Secs., 78 N.J.
1 (1978); Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove
Ed. Assn., 81 N.J. 582, 589 (1980); Local 195, IFPTE v. State, 88
N.J. 393, 403 (1982); Piscataway Township Bd. of Ed. v. Piscataway
Twp. Principals Ass'n., 164 N.J. Super. 98 (App. Div. 1978);
Hackettstown Bd. of Ed., 6 NJPER 263 (¶11124 1980) aff'd App. Div.
Docket No. 385-80T3 (decided 1/8/82), certif. den. 89 N.J. 429
(1982); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138
(¶14066 1983); East Brunswick Bd. of Ed., P.E.R.C. 82-111, 8 NJPER
320 (¶13145 1982).

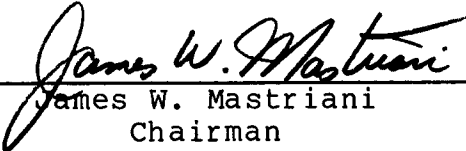
The Board has not persuaded us that the foregoing principles do not apply. It relies on Woodstown-Pilesgrove, but we believe that case strongly supports our finding that the instant dispute may be submitted to binding arbitration. There, teachers were required to work two additional hours on the day before Thanksgiving. The union sought additional compensation at arbitration. The Supreme Court held that such a grievance could be submitted to arbitration "since the narrow issue here concerns payment for the hours worked due to the extension of the work period.... There being no demonstration of a particularly significant educational purpose, and the budgetary consideration being the dominant element, it cannot be said that negotiation and binding arbitration of that matter significantly or substantially trenched upon the managerial prerogative of the board of

education." Id. at 593-594. These exact considerations are present here. Finally, we do not believe that this matter is too insignificant to be submitted to arbitration. It involves one hour of uncompensated work per week per teacher. Woodstown-Pilesgrove impliedly rejected such a contention and we have explicitly done so in similar cases. E.g., Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984).

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
April 18, 1986
ISSUED April 21, 1986

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

In the Matter of

MONTVILLE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-29

MONTVILLE TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission deny the Petitioner's request to restrain arbitration of a grievance filed by the Respondent for additional compensation for teachers as a result of the lengthening of the schoolday by 12 minutes. The Hearing Examiner rejected the contention of the Petitioner that a 1984 reorganization of the Central Middle School was a major educational policy decision of such magnitude that any impact on terms and conditions of employment was non-negotiable-non-arbitrable. He also rejected the contention that the matter was de minimis merely because teacher-pupil contact time decreased 21 minutes per day while the length of the schoolday increased by only 12 minutes.

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.

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ASSOCIATION,

Respondent.

Appearances:

For the Petitioner
Rand & Algeier, Esqs.
(Ellen S. Bass, Esq.)

For the Respondent
Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, Esq.)

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 November 13, 1984, by the Montville Township Board of Education (hereinafter the "Petitioner" or the "Board"), in which it sought a permanent restraint of binding arbitration of a grievance filed by the Montville Township Education Association (hereinafter the "Respondent" or the "Association") seeking compensation for a 12-minute lengthening of the school day on and after September, 1984.

The parties filed briefs with the Commission in support of their respective positions in January and February, 1985. Following a request by the Petitioner, a Notice of Hearing issued on August 29, 1985, to resolve certain factual issues raised by the parties.

Pursuant to the Notice of Hearing, a hearing was held on November 19, 1985, in Montville, New Jersey, at which time the Petitioner only adduced testimony and documentary evidence, the Respondent electing to rely upon the evidence adduced by the Petitioner. Oral argument was waived and the parties filed supplemental post-hearing briefs by January 16, 1986.

A Petition for Scope of Negotiations Determination having been filed with the Commission, and, after hearing, and after consideration of all of 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 OF FACT

1. The Montville Township Board of Education is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Montville Township Education Association is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Central Middle School, housing grades seven and eight, was reorganized in September, 1981. At that time the school day commenced at 9 a.m. and concluded at 3:18 p.m.; during which there were eight teaching periods. Some of the teachers were grouped in teams for teaching in five subjects: math; science; social studies; language arts; and foreign language. There was one period of electives and a lunch period of 21 minutes. Additionally, there was a homeroom of 21 minutes and an enrichment activities period. Physical education was on an alternate day basis.^{1/}

4. Almost immediately after the reorganization of September, 1981, an evaluation was undertaken in 1982, which was prompted by a perception that not enough time was being devoted to reading, literature and foreign languages. Also, there was a concern about the length of the lunch period, and that there was not enough physical education and, finally, that there was no computer education. Thus, there was set in motion plans for a further reorganization of the Central School.

5. The moving force in the reorganization, which became effective in September 1984, was Richard G. Bozza, the Principal of the Central Middle School. In October, 1983, Bozza submitted to the Board a multi-paged document entitled, "Central School Reorganization" (P-1). This was followed by an additional

^{1/} Prior to the reorganization in September, 1981, there were team teaching groups in six subject areas; the lunch period was 25 minutes; and there was no enrichment activity period.

multi-paged document, also entitled, "Central School Reorganization," which was presented by Bozza in December, 1983 (P-2). On January 26, 1984, Bozza submitted to Dr. Robert A. Winter, the Superintendent of Schools, a memorandum on proposed reorganization at the Central School, consisting of four pages (P-3), to which was attached the December, 1983, proposal (P-2).^{2/}

6. The Board formally approved the proposed reorganization of the Central School at its March, 1984, and April, 1984, meetings (see agenda of Special Meeting of April 18, 1984--Exhibit P-4).

7. As a result of the Board's adoption of the proposed reorganization of Central Middle School, which became effective in September, 1984, the following changes occurred:

a. The eight-period day previously in effect was increased to nine periods.

b. The commencement of the school day remained at 9 a.m. but dismissal was extended from 3:18 p.m. to 3:30 p.m.

c. The length of each teaching period was reduced from either 43 minutes or 45 minutes to a uniform 40 minutes.

d. The six minutes which had previously been allocated to homeroom were added to the first period, making the

^{2/} Bozza had solicited and obtained faculty input to reorganization through a faculty group known as the Faculty Advisory Committee (P-6A through P-6C; P-7A) as well as that which he received at regular faculty meetings (P-7B through P-7E).

first period 46 minutes in duration, which was then followed by eight 40-minute periods. The first period still included the homeroom function.

e. The lunch period was increased from 21 minutes to 40 minutes.

f. Physical education and health education were expanded so that physical education was increased from 90 to 120 days and health education was increased from 45 days to 60 days.

g. Computer education was instituted for the first time on a 45-day cycle.

h. The enrichment period remained the same but the teacher teams for reading, literature and foreign language met daily instead of every other day.

i. There was a reduction-in-force (RIF) of one academic team of four teachers which, as a result, resulted in their termination.^{3/}

j. Preparation time increased across the board for all teachers from 43 minutes to 60 minutes.

^{3/} The RIF of this team occurred because of the declining enrollment and cannot, thus, be attributed solely to the reorganization. Also, while the total teacher complement decreased from 37 to 36 in the 1984-85 school year, this was accounted for by the RIF, supra, the addition of two full-time computer education teachers and a full-time foreign language teacher, and the addition of one full-time special education teacher.

k. The provision in Article X of the collective negotiations agreement (J-1, p. 10) that teachers shall not be required to be in their classrooms more than ten minutes prior to the students' late bell nor remain more than 15 minutes after the final dismissal bell remained unaffected and unchanged.

l. There was no change in the duration of after school duties, namely, teachers were free to leave at 4:15 p.m., a reduction of 12 minutes in the length of time previously required (this was, of course, a concomitant of the change in the length of the teaching day from 3:18 p.m. to 3:30 p.m.).

m. The change in teacher-pupil contact time is set forth in a chart contained in the February 19, 1985 Affidavit of Bozza, which was stipulated as accurate at the hearing (Tr. 33). This chart indicates clearly: (1) that teacher-pupil contact time has decreased by 20 minutes per day; (2) that cafeteria duty has decreased by one minute per day; and (3) that morning homeroom duty has remained the same. Thus, overall pupil contact time has decreased by 21 minutes per day as against a 12-minute increase in the length of the day.

8. On June 11, 1984, the President of the Association sent a letter to the President of the Board requesting negotiations on the impact of the proposed lengthening of the Central Middle School teacher workday (P-8).

9. On September 6, 1984, the Association filed a grievance (J-2), in which it maintained that the extension of the

Central Middle School day by 12 minutes was a unilateral decision that violated Article X, Section 3 of the collective negotiations agreement (J-1, p. 10). The Association in its grievance sought retroactive compensation for the increase in working hours. The Board denied the grievance on September 14, 1984, and arbitration was thereafter sought, which resulted the filing of the instant Petition for Scope of Negotiations Determination.

DISCUSSION AND ANALYSIS

Positions Of The Parties

The point of departure for both parties is the Supreme Court's decision in Bd. of Ed. of Woodstown-Pilesgrove Reg. School District v. Woodstown-Pilesgrove Reg. Ed. Ass'n., 81 N.J. 582 (1981). From that point the parties diverge sharply.

The Petitioner contends that when the balancing is made under Woodstown, the educational goal of Montville in its reorganization is predominant and, thus, there is no obligation to negotiate or arbitrate either the decision to reorganize or any impact of the decision to reorganize. The Petitioner also cites in support of this position Maywood Bd. of Ed., 168 N.J. Super., 45 (App. Div. 1979) and Kingwood Twp. Bd. of Ed., P.E.R.C. No. 82-31, 7 NJPER 584 (1981). Additionally, the Petitioner contends that the 12-minute lengthening of the school day is de minimis in terms of an increase in workload, citing Caldwell-W. Caldwell Ed. Ass'n. v. Caldwell-W. Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981); Cinnaminson Bd. of Ed., P.E.R.C. No. 82-84, 8 NJPER 220

(1982); and Pompton Lakes Bd. of Ed., P.E.R.C. No. 82-85, 8 NJPER 221 (1982).

The Respondent, arguing that Woodstown and the result therein, supports its position in the instant case also cites City of Elizabeth v. Elizabeth Fire Officers Ass'n., Local 2040, 198 N.J. Super. 382 (App. Div. 1985), which held severable the non-negotiable institution of a sick leave verification policy as against the issue of who pays for required doctors' visits, the latter being mandatorily negotiable. Also, in support of its position that the negotiability-arbitrability of the instant extension of the school day by 12 minutes is severable from the managerial prerogative to reorganize, the Respondent cites City of Newark, P.E.R.C. No. 86-52, 11 NJPER 703 (1985) where the Commission found arbitrable a claim for overtime pay for police recruits who were assigned to work a Sunday parade detail, notwithstanding that the City had the managerial prerogative to assign the recruits to such detail in the first instance. Finally, on the issue of de minimis, the Respondent distinguishes Pompton Lakes and Cinnaminson as cases which involved changes in terms and conditions of employment of limited duration and occurrence, and thus did not affect the teachers' daily work schedule. The Respondent also cites the Commission's decisions in Hope Twp. Bd. of Ed., P.E.R.C. No. 83-126, 9 NJPER 217 (1983) and Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (1984) as cases where the Commission rejected an employer contention that a claim for compensation was de minimis.

The Respondent's Claim For Additional Compensation As A Result Of The 12-Minute Lengthening Of The Workday Is Arbitrable.

The Petitioner's contention that the Respondent's grievance be held non-negotiable-non-arbitrable is based upon the two-fold argument that the instant reorganization was of such magnitude in terms of a major educational decision that any impact is non-negotiable and non-arbitrable and, further, that the impact, if any, is de minimis since the increase of the workday of 12 minutes is more than offset by a decrease in teacher-pupil contact time of 21 minutes per day.

The Hearing Examiner is not aware of any case holding that the employer is entitled to some kind of "set off" merely because teacher-pupil contact time has decreased during a workday which has been increased. The Hearing Examiner is persuaded, and the record so supports, that the affected teachers are occupied during the lengthened workday by teacher tasks, notwithstanding that teacher-pupil contact time has been diminished. For example, even though the length of each teaching period has been reduced to 40 minutes from either 43 minutes or 45 minutes, the 8-period day previously in effect has been increased to nine periods. Additionally, the teacher teams for reading, literature and foreign language now meet daily instead of every other day. Preparation time, required of all teachers, has been increased across the board 43 minutes to 60 minutes per day. The just-cited changes are clearly factors to be considered by an arbitrator in reaching a

determination as to whether or not additional compensation is justified. The mere fact that this dispute may proceed to arbitration is no guarantee that the Respondent will prevail in its claim for additional compensation.

The Hearing Examiner adopts the contention of the Respondent that the proper application of Woodstown in this case compels the conclusion that the basic dispute is budgetary-economic and not that of a major educational policy decision, which would allow of no negotiation-arbitration. The Hearing Examiner concurs with the Respondent that the Appellate Division decision in City of Elizabeth, supra, is sound authority for severing the economic or compensation aspect of the dispute from the managerial reorganization aspect. See also, City of Newark, supra.

Turning finally to the de minimis argument of the Petitioner, the Hearing Examiner plainly disagrees with its contention that the doctrine of de minimis should be applied to the instant case. The Respondent correctly distinguishes Cinnaminson and Pompton Lakes, supra, as cases where the facts indicated that the changes in terms and conditions were of limited duration and occurrence and did not affect the daily and weekly work schedules of teachers. It is significant in Cinnaminson that the Commission stated that none of the changes lengthened the schoolday. In the case at bar there has been a 12-minute increase in the schoolday. The Commission has been very sparing in applying the doctrine of de minimis as evidenced by its decisions in Hope Twp. and Lincoln Park, supra.

Thus, for all of the foregoing reasons, and upon the entire record in this case, the Hearing Examiner makes the following:

RECOMMENDED ORDER

The request of the Montville Township Board of Education for restraint of arbitration of the grievance filed by the Montville Township Education Association for additional compensation for the lengthening of the schoolday is denied and the Petition for Scope of Negotiations Determination is dismissed.



Alan R. Howe
Commission Designee

Dated: January 28, 1986
Trenton, New Jersey