

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

In the Matter of

BOARD OF EDUCATION, BOROUGH
OF PROSPECT PARK,

Respondent,

-and-

Docket No. CO-79-26-59

TEACHERS' ASSOCIATION OF PROSPECT PARK,

Charging Party.

SYNOPSIS

A Hearing Examiner issued a decision granting two motions made by the Charging Party. A motion to hear the issue of alleged increase in workload was granted because the Hearing Examiner found that negotiations were not pre-empted by specific educational statutes and regulations and that the Association was not attempting to negotiate assignment to committees.

A motion to limit testimony and evidence to practices in Respondent's district was granted because while the employees were serving on committees comprised of several school districts, Respondent exercised substantial control over working conditions of the employees.

A Hearing Examiner's rulings ~~on motions~~ are not appealable directly to the Commission except by special permission, but are considered by the Commission in reviewing the record with the Hearing Examiner's ultimate recommended decision.

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Appearances:

For the Respondent

Corrado & Higgins, Esqs.

(William P. Higgins, Esq., of Counsel)

For the Charging Party

Goldberg & Simon, Esqs.

(Gerald M. Goldberg, Esq., of Counsel)

HEARING EXAMINER'S DECISION AND ORDER

On August 1, 1978, the Teacher's Association of Prospect Park (the "Association") filed an unfair practice charge against the Board of Education, Borough of Prospect Park (the "Board") and filed an amended complaint on October 17, 1978 alleging the Board had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").^{1/} The charge was processed in accordance with the Commission's rules, and it appearing to the Director of Unfair Practices that the allegations, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued.

^{1/} The Complaint alleges violation of N.J.S.A. 34:13A-5.4(1) & (5) which subsections prohibit employers, their representative or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit or refusing to process grievances presented by the majority representative."

The Complaint alleges that the Respondent Board unilaterally increased the work hours and workload of certain teachers by assigning them to serve on a mathematics curriculum committee and a reading curriculum advisory committee without providing additional compensation (in either money or released time) as had been the past practice for committee assignments and without negotiations with the majority representative Association.

The Board responded that the appointments to the curriculum committee are made by a joint coordinator who is an employee of four school districts of which Prospect Park is just one and therefore the Respondent Board has not unilaterally increased terms and conditions of employment of the employees in question. The Board further responds that since the curriculum development is mandated under regulations promulgated by the State Board of Education, negotiations have been preempted by these regulations.

A prehearing conference was conducted by the undersigned on March 15, 1979. At that conference the charging party made two motions pursuant to N.J.A.C. 19:14-4.1 et seq. The charging party moved that:

- (1) While these educational programs may be mandated by regulations of the Board of Education, the Commission should accept jurisdiction to hear the issue of an alleged increase in workload without prior negotiations; and that
- (2) Testimony and evidence concerning practices and procedures of appointments to these committees in districts other than Prospect Park should be barred.

Subsequent to the conference, both parties submitted briefs and the charging party subsequently submitted a reply brief.

(1) The motion to hear the workload issue

In its motion the charging party argues that the Board unilaterally increased the work hours and workload of Board employees by assignment to curriculum committees and that the Public Employment Relations Commission's jurisdiction to hear such allegations of unilateral changes of mandatorily negotiable terms and conditions of employment was reaffirmed in the Supreme Court's decisions in State v. State Supervisory Employees Association 78 N.J. 54 (1978) and Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978).

Furthermore, the Association argues that negotiations on workload and work hours in this case are not precluded under the Supreme Court's decision in State Supervisory Association by specific language contained in N.J.S.A. 18A:1.1 et seq. and particularly N.J.S.A. 18A:7A-1 et seq.

The Board argues that curriculum development is specifically mandated under sections of N.J.S.A. 18A:7A-1 et seq.^{2/} and certain provisions of the New Jersey Administrative Code promulgated thereunder and cannot be negotiated under the Court's decision in State Supervisory Employees Association. The Board also contends that it exercised its management right to assign teachers to curriculum committees and that such assignment of teachers has been rendered non-negotiable under Ridgefield Park Board of Education, supra. Additionally the Board points out that the collective negotiations agreement between the parties allows the principal to alter the teacher's school day. They also argue that Maywood Education Association v. Maywood Board of Education 168 N.J. Super 45 (App. Div. 1979), petition for certification denied ___ N.J. (June 29, 1979) together with State Supervisory Employees Association totally preempts all negotiations on the subject.

In a reply brief the Association counters that it is not appointment to curriculum committees it wishes to negotiate but rather a change in workload and that contractual defenses to such increased workload at this point of the proceeding are prematurely raised and therefore inappropriate. The Association also argues that in the Maywood decision the court noted that the increase in the kindergarten teacher's workload was found to be mandatorily negotiable while it resulted from a management decision concerning student safety.

After careful consideration of the parties' submissions, I find that the issue to be placed before the undersigned involves alleged increase in workload, not assignment to curriculum committees, and that negotiations on this subject have not been precluded by specific statutes or regulations.

In Bethlehem Township Education Association v. Bethlehem Township Board of Education P.E.R.C. 80-5, 5 NJPER 290 (¶10159, 1979), appeal pending App. Div. Docket No. A-4824-77, the Commission considered the relationship of certain educational statutes and regulations concerning tenured teachers evaluation and the negotiations obligation of the Board and found that these statutes and regulations did not

^{2/} See Appendix A

totally preempt negotiations on the subject.^{3/}

The statutes relied on by the Board in the instant case provide for a (1) through and efficient education system, (2) including curriculum development and (3) establishment by local boards of educational goals, objectives and standards. (See Appendix A) The regulations relied on provide (1) development of an educational plan, (2) staff in-service improvement programs and (3) curriculum programs of educational plans by boards in consultation with the chief school administrator and teaching staff members. I do not find these to be the specific type statutes and regulations envisioned by the Supreme Court in the State Supervisory case as preempting negotiations on otherwise negotiable terms and conditions of employment, e.g., workload.

Numerous Court and Commission decisions stand for the general principle that teacher workload is mandatorily negotiable.^{4/} I agree with the Association that contract defenses to alleged workload increases are prematurely raised herein.

Accordingly the Motion to accept jurisdiction to hear the issue of alleged workload increase is granted.

(2) The Motion to limit testimony and evidence to practises and procedures in Prospect Park

The Respondent answers the Unfair Charge by stating that a unilateral decision that may have altered terms and conditions of employment as alleged by the

^{3/} Both the Board and amicus in Bethlehem argued the State Supervisory Employees Association and Maywood precluded negotiations but the Commission found that while some statutes or regulations can prevent all negotiations on a particular subject, not every regulation or statute involving a term and condition of employment has that effect.

^{4/} See State v. State Supervisory Employees Assn., 78 N.J. 54 (1978); Byram Twp. Bd. of Ed. b. Byram Twp. Education Assn., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd. 152 N.J. Super. 12 (App. Div. 1977); Red Bank Board of Ed. v. Warrington, 132 N.J. Super. 564 (App. Div. 1976); Burlington Co. College Faculty Assn., Board of Trustees, 64 N.J. 10 (1973); Newark Bd. of Ed. and Newark Teachers Union, P.E.R.C. No. 79-24, 4 NJPER 486 (¶14221 1979), P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), appeal pending App. Div. Docket No. A-2060-78; Boro of Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Assn., P.E.R.C. No. 79-44, 5 NJPER 48 (¶10032 1979), appeal pending App. Div. Docket No. A-2054-78; In re Buena Regional Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (610072 1979); In re Rahway Board of Education, P.E.R.C. No. 79-30, 5 NJPER 23 (¶10015 1978); In re Lincoln Park Board of Education, P.E.R.C. No. 78-88, 4 NJPER 257 (¶14221 1978); In re Middlesex County College Bd of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶1023 1977); and In re State of New Jersey (Stookton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977).

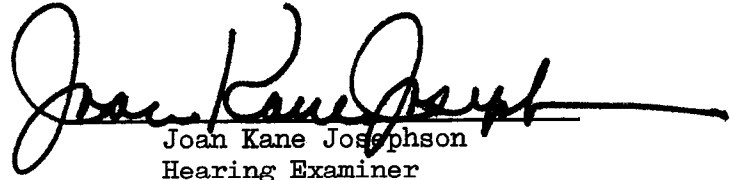
Association was made by a coordinator employed by four districts of which Prospect Park is just one. Thereafter, the Association made this motion to limit testimony and evidence to working conditions in Prospect Park.

In determining the public employer status in the context of a collective negotiations relationship, the authority that exercises substantial control over working conditions affecting the concerned employees must be identified.^{5/} Relevant factors in determining employer/employee status include supervisory control, work assignments, authority to control working hours, and day to day control of personnel practices. The affected employees herein are in an appropriate collective negotiations unit represented by the charging party and while certain management decisions may be made by this jointly employed coordinator, these employees with their majority representative look to the Prospect Park Board of Education to resolve major concerns affecting their employment.^{6/} Therefore, alleged workload increases and defenses thereto must be viewed in the context of the Teachers Association at Prospect Park and the Prospect Park Board of Education.

Accordingly, the motion to limit testimony and evidence to practices and procedures in Prospect Park is granted.

Order

For the foregoing reasons the Motions made by the Charging Party are granted, the hearing will continue and parties will be served with an Order Rescheduling Hearing.



Joan Kane Josephson
Hearing Examiner

DATED: November 9, 1979
Trenton, New Jersey

^{5/} See Bergen County Bd. of Chosen Freeholders and State of New Jersey and Bergen Co. Prosecutor and Superior Officers of County Detectives Assn. of Bergen County, D.R. No. 78-34, 4 NJPER 104 (¶14047 1978), P.E.R.C. No. 78-77 4 NJPER 220 (¶14110 1978) appeal pending App. Div. Docket No. A-4785-77).

^{6/} I cannot envision the Commission certifying an additional collective negotiations unit comprised of teachers from the four districts on these committees who would negotiate with a joint employer comprised of the four Boards who employ these teachers and negotiating for their work on the curriculum committees.

Appendix A

The Board cites the following specific statutes and rules as preempting negotiations:

N.J.S.A. 18A:7-2.1:

"The New Jersey Constitution provides that the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of 5 and 18 years is a legislative responsibility;"

N.J.S.A. 18A:7-2.6:

"A thorough and efficient system of education includes local school districts in which decisions pertaining to the hiring and dismissal of personnel, the curriculum of the schools, the establishment of district budgets, and other essentially local questions are made democratically with a maximum of citizen involvement and self-determination and are consistent with Statewide goals, guidelines and standards;" (Board's emphasis added)

N.J.S.A. 18A:7A-7:

"Local boards of education; determination of goals and standards, pursuant to state rules each local board of education goals, objectives and standards pursuant to rules prescribed by the State board." (Board's emphasis added)

N.J.A.C. 6:8-31 "Educational Plan Requirements
(a) Each district Board of Education in consultation with the chief school administrator and teaching staff members... shall develop a written educational plan..."

N.J.A.C. 6.8-4.4 "Staff in-service programs
(a) staff in-service improvement programs developed in consultation with the chief school administrator and teaching staff members shall be planned as needed to meet the priorities identified by the district or school."

N.J.A.C. 6.8-3.5 "Educational Programs (Curriculum)
(a) Educational Program (Curriculum) for each district and school shall be developed in consultation with the teaching staff members, under the direction of the chief school administrator..."