

I.R. NO. 82-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-82-106

FREEHOLD TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman denies the Board's motion to issue temporary restraints during the pendency of a Petition for Scope of Negotiations Determination inasmuch as the grievance to be submitted to arbitration appears to involve issues of work load and compensation as opposed to matters of educational policy determinations.

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Appearances:

For the Petitioner, Dorf and Glickman, P.A.
(Steven S. Glickman, of Counsel and On the Brief)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel and On the Brief)

DECISION AND ORDER

On April 27, 1982, the Freehold Township Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking to restrain binding arbitration of a grievance filed against the Board by the Freehold Township Education Association (the "Association"). Additionally, pursuant to N.J.A.C. 19:14-9.1 et seq., the Board has filed a motion seeking to temporarily restrain arbitration during the pendency of the scope of negotiations proceeding. Both parties have filed briefs with respect to the Petition for Scope of Negotiations Determination and Motion for Temporary Restraints of Arbitration.^{1/}

1/ The Commission has been vested by the court with the power to grant interim relief during pendency of a scope of negotiations proceeding and the power to terminate any arbitration proceedings by issuing a final order in a scope proceeding. See Bd. of Ed. of the City of Englewood v. Englewood Teachers Assn., 135 N.J. Super 120 (1975).

The issue raised by the Board in its petition is whether its decision to increase the school day on certain school days from three and onehalf (3 1/2) to four (4) hours is mandatorily negotiable and/or arbitrable.

It would appear under facts of this case that the Board would have a substantial likelihood of success in convincing the full Commission that its decision to regulate hours of work on days which are shortened due to inservice days is neither mandatorily negotiable nor arbitrable. Thus, if the issue the Association sought to arbitrate would remove the right of the Board to make such an educational policy decision, I would have no hesitation in suspending arbitration during the pendency of this scope proceeding and such an action would be a reasonable exercise of Commission authority. Woodstown-Pilesgrove Sch. v. Woodstown-Pilesgrove Ed. Assn, 81 N.J. Super 582 (1980).

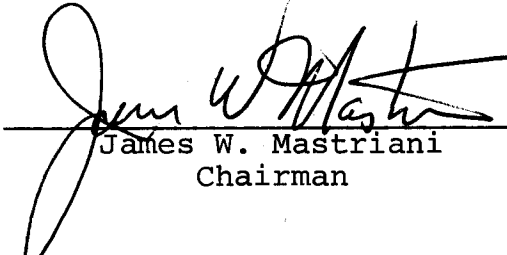
However, the Association does not challenge the decision of the Board to schedule in-service work days, to extend the hours of work within the shortened school day, and to provide for additional instructional time during the shortened session. Instead, the Association submits that the sole issue it seeks to arbitrate is whether teachers are entitled to additional compensation for increased pupil contact time as a result of the Board's extension of the shortened work day. Inasmuch as the subject matter of the grievance does not entrench upon the Board's educational policy determination, I decline to restrain arbitration during the pendency of the Petition for Scope of Negotiations Determination.

The Board additionally argues that its actions are justifiable under the terms of the existing agreement. This argument,

however, relates to the merits of the grievance and the contract defenses which the Board may elect to assert in the arbitration proceeding and is outside the reach of a Commission decision in a scope petition. See In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55,57 (1975) and In re Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

ORDER

The Board's motion for temporary restraint of arbitration during the pendency of its petition for scope of negotiations determination with respect to the issues alleging increases in workload and for additional compensation is hereby denied.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 27, 1982