

P.E.R.C. NO. 81-118

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH HACKENSACK BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-52

SOUTH HACKENSACK EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, denies the request of the South Hackensack Board of Education to restrain arbitration of a grievance concerning the Board's extention of the teachers' workdays on the days immediately preceding the Thanksgiving and Christman recesses during the 1980-81 school year. The Commission finds that the factual and legal context of this case is nearly identical to that present in Bd of Ed of Woodstown-Pilesgrrove v. Woodstown-Pilesgrrove Ed Ass'n, 81 N.J. 582 (1980), in which the Supreme Court held that a similar grievance was negotiable and therefore arbitrable.

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Appearances:

For the Petitioner, Beattie & Padovino, Esqs.
(Robert J. Lenrow, of Counsel)

For the Respondent, Goldberg & Simon, P.C.
(Louis P. Bucceri, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on January 2, 1981 by the South Hackensack Board of Education (the "Board") alleging that a dispute existed as to the negotiability of a certain matter which the South Hackensack Education Association (the "Association") wished to submit to arbitration pursuant to a grievance procedure contained in a collectively negotiated agreement with the Association. An amended Petition was filed by the Board on January 22, 1981, at which time the Board filed its brief. The Association filed a Respondent's brief on February 27, 1981 and a reply brief was filed by the Board on March 23, 1981.

At issue herein is the Board's change in the 1980-81 school calendar and resulting extension of the teachers' workday on the days immediately preceding the Thanksgiving and Christmas recesses. These duties were half-day sessions for a number of prior years, but were changed to full-day sessions by the Board for the school year currently in progress.^{1/}

The context of the dispute is identical to that present in Bd of Ed of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed Ass'n, 81 N.J. 582 (1980) and accordingly resolution of the negotiability issue would depend whether on balance the dominant theme of the dispute is the Board's educational policy reasons for making the change or the direct affect on the teachers' work and welfare.

However, prior to inquiring into the negotiability of the Board's action, we observe that the terminal step of the parties' grievance procedure provides for advisory, as opposed to binding, arbitration. Since the Supreme Court has held that matters of educational policy which affect employees may be the subject of advisory arbitration, we will allow the Association's grievance to proceed to arbitration whether it relates to educational policy or a term and condition of employment. See, Bernards Twp. Bd of Ed v. Bernards Twp. Ed Ass'n, 79 N.J. 311 (1979).

^{1/} The Board in its petition also raises certain substantive and procedural arbitrability issues which, as it properly concedes, are not relevant to our scope of negotiations inquiry. Accordingly, we do not address these arguments.

It appears that the extension of the half-day sessions preceding the vacations to full-day sessions were made for the purpose of sending certain South Hackensack students to the neighboring Hackensack district for the purpose of attending Home Economics and Shop classes during the afternoon. Such students regularly attend such classes in Hackensack during the course of the school year. The Board asserts it had difficulty sending students to Hackensack in the morning on those few days when South Hackensack ran half sessions and accordingly made those days full days so as to allow students to attend afternoon Home Economics and Shop classes on those days, rather than morning sessions which were apparently becoming a problem to the Hackensack district.

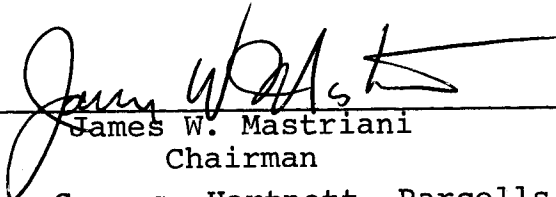
As in Woodstown-Pilesgrove, the extension of these half day sessions to full day sessions also had a direct and intimate affect on the work and welfare of the teaching staff by increasing their workload and workday on each of these occasions by two hours. The Board herein argues that Woodstown-Pilesgrove is distinguishable because no educational reasons were presented therein to justify the extension of the school day. However, as we read the Supreme Court's decision, we find that the Court decided the case in favor of negotiability, not because there was an absence of an educational reason for extending the school day, but that the educational reasons proffered were not particularly significant and were outweighed by the direct effects on the

teachers' work and welfare. As the facts of the instant dispute could scarcely be any closer to those present in Woodstown-Pilesgrove, we conclude the Association's grievance relates to a negotiable term and condition of employment.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Parcels and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
April 16, 1981
ISSUED: April 20, 1981