

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

FREEHOLD BOROUGH BOARD  
OF EDUCATION,

Respondent,

-and-

Docket No. CO-80-151-104

FREEHOLD BOROUGH TEACHERS  
ASSOCIATION,

Charging Party.

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FREEHOLD BOROUGH BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-36

FREEHOLD BOROUGH TEACHERS  
ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a consolidated scope of negotiations and unfair practice proceeding, finds, based upon a stipulated record, that the Freehold Borough Board of Education did not unlawfully refuse to negotiate with the Freehold Borough Teachers Association in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) when it directed that all teachers complete an individual instruction plan (I.I.P.) for all students assigned to any teacher in the subject areas of math and reading. The Commission determines that while the Board's action affected the mandatorily negotiable term and condition of employment of teacher workload, there was no indication in the record that workload had actually increased, nor even assuming there was a workload increase that workload went beyond the contractual limitations. Accordingly, the Commission concludes that the Association did not meet its burden of proving the allegations of its complaint by a preponderance of the evidence, and the complaint was ordered dismissed in its entirety. The instant dispute was determined to be non-negotiable.

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Appearances:

For the Board of Education, DeMaio & Yacker, Esqs.  
(Vincent C. DeMaio, of Counsel)

For the Teachers Association, Greenberg & Mellk, Esqs.  
(James F. Schwerin, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission on November 11, 1980, by the Freehold Borough Teachers Association (the "Association"), alleging that the Freehold Borough Board of Education (the "Board") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Association contends that the

Board acted illegally when it unilaterally and without negotiations increased the work-load of teachers or requiring teachers to complete Individual Instruction Plans ("IIPs") for all students in reading and mathematics. These actions are alleged to be violative of N.J.S.A. 34:13A-5.4(a)(1) and (5).<sup>1/</sup>

A Petition for Scope of Negotiations Determination was filed with the Commission by the Board on November 18, 1980, seeking a determination as to whether the Board's requirement and implementation of IIPs is a required subject for negotiations within the meaning of the Act.

It appearing that the allegations of the Unfair Practice Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint was issued in this matter on March 9, 1981. The parties, having previously agreed to stipulate the facts in this matter, executed a stipulation of the facts herein.<sup>2/</sup> Pursuant to N.J.A.C. 19:14-6.7, the parties waived an evidentiary hearing and a Hearing Examiner's Recommended Report and Decision, and agreed to submit this matter directly to the

<sup>1/</sup> These subsections prohibit public employers, their representatives 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."

<sup>2/</sup> The procedural history of this matter is as follows: After the filing of the Charge and the Scope Petition, an exploratory conference was conducted by a Commission staff attorney on January 26, 1981. Based upon the discussions at that conference, the parties agreed that if a Complaint was issued herein, they would execute a stipulation of facts in this matter, waive an evidentiary hearing and submit these matters directly to the Commission based upon the pleadings, stipulations, joint exhibits and briefs. A Complaint was issued herein on March 9, 1981. Thereafter, the parties executed the Stipulation of Facts.

Commission based upon the formal pleadings, the Stipulation of Facts, the contract between the parties, several other joint evidentiary exhibits and the briefs. <sup>3/</sup> Accordingly, this matter is properly before the Commission for determination.

The instant dispute arose from a decision made by the Board on September 22, 1980, that all teachers must complete an Individual Instruction Plan for all students assigned to any teacher in the subject areas of math and reading. The Association asserts that this action, without prior negotiations, constitutes a violation of N.J.S.A. 34:13A-5.4(a)(1) and (a)(5) claiming that the Board's action resulted in a unilateral increase in teacher workload.

The Board contends that the IIP requirement is a managerial prerogative and therefore is non-negotiable. The Board argues that State Board of Education Regulations create a complex scheme of minimum basic skills testing, setting of educational goals and remediation for pupils who need it.<sup>4/</sup> The Board notes that N.J.A.C. 6:8-3.8 requires that pupils shall be assessed to identify those not meeting state minimum proficiency levels. Pupils thus identified must be provided with an individual comprehensive assessment. Those pupils who continue to have

<sup>3/</sup> The other joint exhibits submitted herein include a copy of a blank IIP form and a 24-page memorandum prepared by the Superintendent concerning the IIPs. A copy of the Stipulation of Facts is attached hereto as Appendix A.

<sup>4/</sup> See N.J.S.A. 18A:7A-7 and N.J.A.C. 6:8-3.8 reproduced as Appendix B to this decision.

deficiencies after receiving six years of instruction must then be provided with individual student improvement plans. Accordingly, the Board argues that taken together, the statutory and code provisions cited above establish "that, at least in part, the IIP process is a mandated one and therefore is not negotiable."

The Board also asserts that its actions are non-negotiable inasmuch as the primary purpose of its IIP implementation was to achieve educational objectives:<sup>5/</sup> (1) an evaluation of the educational level of each student in the areas of math and reading, (2) setting educational goals for the student and (3) devising the means for the attainment of such goals.

Finally, the Board argues that even assuming arguendo that negotiations may be required concerning the impact on terms and conditions of employment of a managerial decision, there is no indication in the record that workload has increased; further, that if workload did increase, there is no indication that the increase went beyond the contractual requirements. Citing a provision from the "Teacher Load and Hours" article in the contract,<sup>6/</sup> the Board asserts that there is no indication in the record that any work incident to the IIP program cannot be accomplished within the time period provided for in that article.

<sup>5/</sup> The Board cites Bd. of Ed. of Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Ed. Ass'n. 81 N.J. 582 (1980): "when the dominant issue is an educational goal wherein the Supreme Court stated that there is no obligation to negotiate and subject the matter, including its impact, to binding arbitration,..." at p. 591.

<sup>6/</sup> Exhibit J1, Article VI, A. 3. states:

Preparation time - The administration will attempt to schedule Art, Music, and Physical Education for the members of the individual teams at the same time so team meetings can be conducted during special periods.

The period from 8:05 a.m. to 8:55 a.m. will be duty free and utilized for team planning and coordinating the program.

In its reply brief, the Association acknowledges that no negotiations are required concerning the Board's decision to utilize the IIP process. However, the Association views the workload question separately and contends that negotiations on that subject (workload) are not foreclosed by the non-negotiability of the decision to use the IIPs. The Association likens the instant matter to Bd. of Ed. of the City of Linden v. Linden Ed. Ass'n., P.E.R.C. No. 80-47, 5 NJPER 483 (¶10244 1979), aff'd App. Div. Docket No. A-1054-79 (9/30/80), in which the Board added additional recordkeeping and other administrative duties to an existing reading program. Applying a Woodstown-Pilesgrove analysis, the Court in Linden determined that the Board was required to arbitrate the requirement that teachers perform extra recordkeeping duties.

However, Linden, even if applicable, is not dispositive of this case. Linden was decided only as a scope petition. Thus the Commission's conclusion, affirmed by the Appellate Division, that the workload issue in dispute was negotiable and arbitrable only permitted the matter to proceed to arbitration. It did not dispose of the merits of the dispute. It was for the arbitrator to decide if in fact there had been an increase in workload and if such an increase, assuming one was established, was a violation of the parties' collective negotiations dispute. See Ridgefield Park Board of Education v. Ridgefield Park Education Ass'n, 78 N.J. 144, 154 (1978) quoting In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). In the instant case we have both a scope petition and an unfair practice charge before us, so we must decide whether an increase in workload actually occurred and assuming it did, whether this would violate the parties' agreement,

as the Board has asserted the contract as a defense.

Based upon the limited factual record in this case, we are unable to conclude that a mandatorily negotiable increase in workload actually occurred in this case. The facts indicate that there was no increase in pupil contact time, nor was there a lengthening of the teachers' work day. The only increased workload alleged is based upon the teachers' responsibility to complete IIPs for each of their students. However, the stipulated record herein does not establish what the extent, if any, of such an increase was. Moreover, assuming some measure of increased workload did occur in this matter, there is no indication in the record that any workload increase could not be accommodated within the strictures of the preparation time and compensation provisions already provided in the parties' current contract.<sup>7/</sup> Thus, we must conclude that the Association has not met its burden of proving the allegations of the Complaint by a preponderance of the evidence. See N.J.A.C. 19:14-6.8. Under these facts, we must therefore conclude that the matter in dispute between these parties based on this record was non-negotiable.<sup>8/</sup>

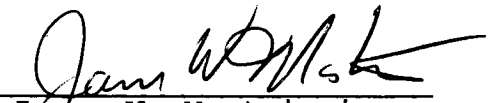
<sup>7/</sup> In addition to Article VI, A.3. quoted in footnote 6 supra, Article VI further provides for a duty free lunch period (Article VI, C) and for a daily "uninterrupted preparation period" (Article VI, B).

<sup>8/</sup> Our analysis of this matter indicates that cases such as In re Madison Board of Education, P.E.R.C. No. 80-116, 6 NJPER 185 (¶11088 1980), In re Northern Burlington Cty Reg. Bd. of Ed., P.E.R.C. No. 80-151, 6 NJPER 315 (¶11154 1980), In re Nutley Bd. of Ed., P.E.R.C. No. 80-33, 5 NJPER 401 (¶10208 1979) and In re Fairview Board of Education, P.E.R.C. No. 81-19, 6 NJPER 395 (¶11204 1980) are more closely on point than In re Linden Bd. of Ed., supra. In the former cases, the Commission found the dominant issue to concern educational policy whereas in Linden, the dominant issue was found to be administrative recordkeeping inasmuch as there was no significant alteration in existing educational policy.

ORDER

For the foregoing reasons and upon the entire record herein, IT IS HEREBY ORDERED that the unfair practice Complaint is dismissed in its entirety and the matter in dispute is determined to be non-negotiable.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted in favor of this decision. Commissioner Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
October 2, 1981  
ISSUED: October 5, 1981



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APPENDIX A  
STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
FREEHOLD BOROUGH BOARD OF EDUCATION,  
-AND-  
FREEHOLD BOROUGH TEACHERS ASSOCIATION

Docket Nos. CO-81-151  
SN-81-36

STIPULATIONS OF FACT

The above-captioned parties hereby stipulate and agree as follows:

1. The Freehold Borough Board of Education (the "Board") is a public employer within the meaning of the Act, is subject to its provisions and is the employer of the employees involved herein.

2. The Freehold Borough Teachers Association (the "Association") is an employee organization within the meaning of the Act, is subject to its provisions and is the statutory majority representative for a unit of certificated personnel in the following categories:

Classroom Teachers, Nurses, Social Workers, Librarians, Learning Disability Specialists, Psychologists, Special Teachers: Speech, Special Education, Art, Music, Physical Education, Industrial Arts, Remedial Instructional Assistants, Aides, Secretaries, excluding part time, substitutes and confidential employees.

3. Attached hereto is a copy of the parties' current Agreement (covering the period from July 1, 1980 through June 30,

JOINT EXHIBIT X



## APPENDIX B

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

Each local board of education shall establish particular educational goals, objectives and standards pursuant to rules prescribed by the State board. In each district in which there are pupils whose proficiency in basic communications and computational skills is below the Statewide standard, the local board annually shall establish an interim goal designed to assure reasonable progress toward the goal of achievement by each such pupil of at least the Statewide standard of proficiency. Each such district as part of its annual educational plan, shall develop a basic skills improvement plan for progress toward such interim goal. Any such improvement plan shall be approved by the commissioner, and may include (a) curricular changes; (b) in-service training programs for teachers; (c) diagnostic, remedial or skill-maintenance programs for pupils; (d) consultation with parents or guardians; (e) any other measure designed to promote progress toward such interim goal. Each year each district shall evaluate pupil proficiency in basic communications and computational skills, and determine its relation to, and progress toward Statewide and any interim goals concerning pupil proficiency in such skills. Such evaluation may be based in part on annual testing and in part on such other means as the board deems proper to determine pupil status and needs, ensure pupil progress, and assess the degree to which the goals have been achieved.

N.J.A.C. 6:8-3.8 states:

(a) Each pupil shall be assessed, upon entrance into the educational system and annually thereafter, to identify pupils not meeting State minimum proficiency levels. In instances, of pupil transfers, assessment records shall be forwarded from the previous school or district to the school or district in which the pupil is newly enrolled. Pupils so identified shall be provided with an individual comprehensive assessment which shall include but not be limited to the assessment procedures set forth in section 4 of this subchapter. For pupils with identified deficiencies after completion of six academic years of instruction beyond kindergarten, local school districts shall develop procedures for the development and implementation of individual student improvement plans. These procedures shall include but not be limited to:

1. A process for the development of the student improvement plan including those persons responsible for the development and implementation of the plan;

2. Identification of a teaching staff member responsible for monitoring the development, implementation and evaluation of the individual's student improvement plan; and

3. A process for notifying the pupil and the parent(s) or guardian(s) of the need for and content of the student improvement plan.

(b) Preventative and remedial programs, supplemental to the regular school program, shall be established. Application for and approval of these State compensatory education programs shall be based upon the following:

1. Enrollment of pupils who have academic, social economic, or environmental needs that prevent them from succeeding in the regular school program in appropriate preventive or remedial programs up to eligibility levels determined by the Department of Education, based upon the severity of academic need as measured by student performance on the Statewide assessment instruments and those students provided for in N.J.A.C. 6:39-1.4(b), and based upon the severity of socioeconomic need as measured by appropriate income and related indicators, and, documented by the needs assessment conducted pursuant to N.J.A.C. 6:8-3.4(a);

2. Procedures for the screening of currently and newly enrolled pupils in order to determine whether or not they should be enrolled in preventive remedial programs. These procedures should include these diagnostic measures which are used to predict the relevant learning difficulties and needs;

3. Instructional and related activities and services, supplemental to the regular school program and based upon identified priority pupil needs;

4. Procedures to provide ongoing communication between teaching staff members and parents or guardians of pupils participating in State compensatory preventive and remedial programs;

5. Evaluation procedures which measure pupil gains in basic skills proficiency related to preventive and remedial program objectives and standards and to Statewide standards in communication and computational skills;

6. Evaluation of the effectiveness of State compensatory preventive remedial educational programs in terms of pupil gains in basic skills proficiency and other relevant indicators;

7. A detailed budget explaining expenditures for administration, instructional paraprofessional and clerical personnel, instructional materials and supplied, equipment, attendance, staff training, health and community services;

8. Assurance of maintenance of effort in the provision of the regular school program.

(c) Annually, on or before August 15, the commissioner shall determine which applications for compensatory education programs are approved and so notify each local board of education.

(d) State compensatory education funds shall be calculated and distributed in accordance with N.J.S.A. 18A:7A-17 and N.J.S.A. 18A:7A-20, on the basis of actual enrollment in approved programs as of the last school day of September.

(e) As part of the annual district and school classification procedure, the State Department of Education shall monitor the district board of education's programs and the rate of pupil growth in achievement with particular attention to services and preventive and remedial educational programs for the basic communication and computational skills.

(f) The Department of Education shall conduct studies and evaluate findings biennially after the effective date of this chapter in order to report the status of progress toward the attainment of pupil minimum proficiency levels in basic communication and computational skills.