

P.E.R.C. NO. 83-126

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-50

HOPE TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds arbitrable a grievance the Hope Township Education Association filed against the Hope Township Board of Education. The grievance involved a request for compensation for teachers assigned to lunchroom duty after the Board eliminated the position of lunch proctor.

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Appearances:

For the Petitioner, Morris, Downing & Sherred, Esqs.
(Craig U. Dana, of Counsel)

For the Respondent, John Davis, NJEA UniServ
Representative

DECISION AND ORDER

On December 2, 1982, the Hope Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a grievance which the Hope Township Education Association ("Association") has filed. The grievance involves a request for compensation for teachers who were assigned to lunchroom duty after the Board eliminated the position of lunch proctor. Both parties have filed statements of position and accompanying submissions.

The Association is the majority representative of all certified teaching personnel in the Hope Elementary School except the administrative principal, child study team members, and substitute personnel. The Board and the Association have

entered a collective agreement effective between July 1, 1982 and June 30, 1983. The agreement contains a grievance procedure which culminates in binding arbitration.

Prior to July, 1982, the Board employed non-teacher lunchroom proctors to supervise lunchroom activities. Apparently, the Board suffered a decrease in state aid and, as a result, terminated the proctors.

On June 16, 1982, its chief school administrator informed the teachers that a new schedule regarding lunchroom supervision would be implemented in September. Every teacher would be assigned to one half hour of lunchroom duty every eight days (one hour of duty every three week cycle). The teachers were not to be compensated for this additional assignment.

On June 22, 1982, the Association filed a grievance. The grievance alleged that the Board violated the contract by reducing the teachers' duty-free preparation time without compensation. The Association sought compensation for the assignments or a reduction in work time.

On August 25, 1982, the chief school administrator denied the grievance. He claimed a contractual right to make the assignments and further asserted that the assignments affected each employee so minutely as to be insignificant in scope. On November 24, 1982, the Board denied the grievance.

On December 2, 1982, the Association demanded binding arbitration. It listed the nature of the dispute as "lunch duty -

change in terms and conditions of employment" and the remedy sought as "compensation or equivalent release time." The instant petition ensued.^{1/}

The Board asserts that it has a managerial prerogative to assign teachers to lunchroom duty under In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977), and that it need not compensate the teachers for these additional duties because the increase in their working time is de minimis under Caldwell-West Caldwell Ed. Ass'n v. Caldwell-West Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981) ("Caldwell-West Caldwell").

The Association has elected not to contest the Board's claimed right to assign teachers to lunchroom supervision, provided that the Commission finds that the lunchroom assignments would help achieve pupil safety and security. It does contest the Board's claim that it has a non-arbitrable right to deny compensation for these assignments.

At the outset, we note the limits of our scope of negotiations jurisdiction.

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

^{1/} No date has been set for arbitration.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, we do not address the merits of the Association's claim that the Board has violated its agreement or the Board's claim that the contract authorized these uncompensated assignments.

The next step of our analysis is to define the issue in dispute. The Board has claimed a managerial prerogative to make lunchroom supervision assignments related to student safety and welfare. The Association does not contest this right and has not sought at any stage of the grievance proceedings to have the assignments rescinded. Thus, the Board's right to make the assignments is not in issue.

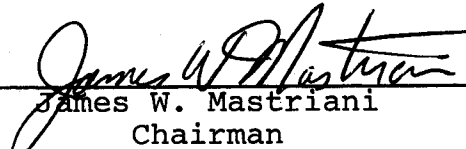
The Board also claims that it has a right not to compensate the teachers for their extra lunchroom duties. The Commission, however, has repeatedly found in similar cases that the issue of additional compensation for increased workload is severable from the issue of the employer's asserted right to assign. See, In re Board of Education of the Borough of Spotswood, P.E.R.C. No. 81-109, 7 NJPER 159 (¶12070 1981); In re Jamesburg Bd. of Ed., P.E.R.C. No. 81-75, 7 NJPER 26 (¶12011 1980); In re Plainfield Bd. of Ed., P.E.R.C. No. 80-42, 5 NJPER 418 (¶12019 1979). See also, Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980); In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER ____ (¶ ____ 1983).

We also disagree with the Board's assertion that the issue of compensation is not arbitrable because the extra work was, in the Board's opinion, de minimis under Caldwell-West Caldwell. We do not believe that causing every teacher in the unit to lose a one-half hour block of non-duty time every eight days is a de minimis change within the intendment of Caldwell-West Caldwell.

ORDER

The request of the Hope Township Board of Education for a restraint of binding arbitration over the grievance of the Hope Township Education Association is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Butch was not present.

DATED: Trenton, New Jersey
March 16, 1983
ISSUED: March 17, 1983