

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE TOWNSHIP
OF WEST DEPTFORD,

Petitioner,

Docket No. SN-80-30

-and-

WEST DEPTFORD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission concludes that a disputed portion of a job description for classroom teachers is not mandatorily negotiable. The Commission notes, however, that a Board of Education cannot unilaterally change terms and conditions of employment. The Board cannot rely on the language in the job description to unilaterally increase workload or to change other terms and conditions of employment but the disputed language which relates to participation in after school functions is not itself mandatorily negotiable. See also In re Teaneck Bd. of Ed., 161 N.J. 75 (App. Div. 1978).

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Appearances:

For the Petitioner, Capehart & Scatchard, P.A.
(Mr. Alan R. Schmoll, of Counsel)

For the Respondent, Joel S. Selikoff, P.A.

DECISION AND ORDER

On October 22, 1979, a Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission by the Board of Education of the Township of West Deptford (the "Board"). The petition seeks a determination that the development and utilization of a job description for classroom teachers is not a mandatory subject for negotiations and that the Board has no obligation to negotiate with the West Deptford Education Association (the "Association") concerning this matter. The Association contends that the job description is mandatorily negotiable. All briefs were filed by December 11, 1979.

The Board states it developed a job description for classroom teachers pursuant to N.J.A.C. 6.3-1.21 et seq.^{1/} The disputed

^{1/} N.J.A.C. 6.3-1.21 et seq. relates to the requirement that tenured teachers be evaluated. It requires, among other things, the development of job description and evaluation criteria.

paragraph of that revised job description,^{2/} which was made effective September 1, 1979, reads:

"Effectively contributes in a reasonable manner to the overall after-school functions and student activities of his/her school unit."

On September 17, 1979, the Association advised the Board that it considered this revised job description to violate Article IV(A)(2) of the collective negotiations agreement between the parties covering the period 1977-79. That agreement is still in effect.

That Article reads:

The total required school day for teachers in the Elementary, Middle and Senior High Schools shall not exceed seven and one half (7 1/2) hours.

By letter dated October 1, 1979, the Association advised the Superintendent that "teachers will cease to volunteer their services for extra-curricular after school activities."

The Board contends that the development and utilization of the disputed paragraph of the job description involves the exercise of inherent management prerogative. Citing In re Teaneck Board of Education, 161 N.J. Super. 75 (App. Div. 1978) and Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), the Board contends that the disputed paragraph is a criterion to be used in evaluating teachers and that evaluation criteria and application thereof are not mandatorily negotiable. Further, the Board asserts that negotiations are preempted by N.J.A.C. 6:3-1.121(c)(2). The Board requests an order that the

^{2/} The job description in effect prior to September 1, 1979 provided that: "Each teacher is encouraged to cooperate and actively participate in the affairs of the school and community."

disputed paragraph is an illegal subject for negotiations and an order directing the Association to refrain from advising its membership to refuse to provide after-school and extra-curricular activities.

The Association contends that the issue is a unilateral change in workload occasioned by the revised job description which, in effect, requires all teachers to seek assignments beyond the normal working day [See Article IV(A)(2), supra]. The Association argues the prior Commission decisions holding that a board of education has the unilateral authority to make extra-curricular assignments is limited to specific individual teachers and to particular assignments.^{3/} Imposing such duties on all teachers through the revised job description increases the workload of all teachers and is mandatorily negotiable. The Association alleges that the disputed paragraph amounts to "forced volunteerism." It argues that there was no specific need at the time the revised job description was adopted, and that therefore the Association claims that there could be no significant interference with inherent management prerogatives pertaining to the determination of governmental policy by requiring the Board to negotiate over this subject with the Association.

The Association attempts to distinguish Teaneck, supra, by asserting that Teaneck holds that evaluation criteria is an illegal

^{3/} In re Rutherford Board of Education, P.E.R.C. No. 77-22, 3 NJPER 37 (1976); In re Mainland Reg. Bd. of Ed., P.E.R.C. No. 80-8, 5 NJPER 301 (¶10162 1979), appeal pending App. Div. Docket No. A-4566-78 and In re Ramapo Indian Hill H.S. Dist. Bd. of Ed., P.E.R.C. NO. 80-9, 5 NJPER 302 (¶10163 1979), appeal pending App. Div. Docket No. A-4613-78.

subject of negotiations but that the issue herein is whether a board of education may increase workload by altering a job description. Relying on In re Hazlet Twp. Board of Education, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979), Appeal pending, App. Div. Docket No. A-2875-78, the Association contends that the discretion of the Board to select evaluation criteria does not imply a concomitant authority to alter terms and conditions of employment.

Finally, the Association urges that the Board may not unilaterally require teachers to participate in extra-curricular activities which do not involve the supervision of students, citing In re Carteret Board of Education, P.E.R.C. No. 80-30, 5 NJPER 397 (¶10215 1979).

A job description serves numerous purposes. These include a means by which the employer can indicate to prospective or current employees what it expects of them and thus provides a guide to the employees on how to perform their particular job responsibilities. It also provides an established standard, known to both the employer and the employee, against which to evaluate the employee's performance. However, like all employer actions, the development of a job description must be done in a manner consistent with the employer's responsibilities and legal obligations. Thus, for example, a board of education could not develop a job description which assigns a teacher teaching responsibilities which would violate certification requirements established by the State Department of Education. One of the legal obligations and responsibilities imposed

on a board of education is the requirement to negotiate concerning terms and conditions of employment and not to unilaterally change employees' working conditions. N.J.S.A. 34:13A-5.3.

The development of job descriptions must be done in a fashion which is compatible with that requirement. Board of Education of Englewood v. Englewood Teachers Ass'n., 64 N.J. 1, 7 (1973).

Thus, a board was held to have violated this Act by not negotiating before it unilaterally changed certain twelve-month positions to ten-month positions and reduced the salaries of the employees proportionately. In re Piscataway Township Board of Education, 164 N.J. Super. 98 (App. Div. 1978). Arguing that it changed the job description from a twelve-month one to a ten-month one would not have changed this result.

It thus becomes necessary to see what aspect of employment the change in the job description addresses and what change, if any, it makes in employees' terms and conditions of employment. In the instant case, the subject addressed is extra-curricular activities. The Board is correct in indicating that the use of participation in voluntary, after school activities as an evaluative criteria was specifically held not to be a term and condition of employment in In re Teaneck Board of Education, 161 N.J. Super. 75 (App. Div. 1978). Additionally, as discussed, this Commission has held that a board of education has the unilateral right to assign teachers to supervise students in extra-curricular activities and that the performance of such activities is part of the professional responsibilities of teachers. See footnote 3 supra, particularly

In re Rutherford Board of Educaiton, P.E.R.C. No. 77-22, 3 NJPER 37 (1976). The Board must negotiate concerning compensation, workload and other terms and conditions of employment involved in such extra-curricular activities but it does have a right to insure that such activities are properly supervised and to evaluate staff on their willingness to accept their share of these responsibilities.^{4/} See footnote 3 supra.

The disputed paragraph appears to be consistent with these managerial and educational policy prerogatives without necessarily violating existing terms and conditions of employment. It only states that the Board expects its teachers to contribute in a reasonable manner to after-school functions and student activities. The Association alleges that this will have the effect of violating the hours provision of the contract and/or will impose additional workload on the teachers. At this point, it has not been demonstrated on this record that this will necessarily be the case or that satisfaction of this job expectation will require anything more from the teachers than has been done in the past. The disputed language does not of itself mandate such a change. Nor is there any indication on this record that if the change in the language of the job description does reflect a change in the Board's requirements of teachers with regard to after school activities that the Board

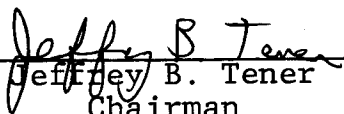
^{4/} A distinction has been made by the Commission between after-school activities involving student supervision and simply additional workload imposed on teachers in the form of after school meetings, workshops and other similar activities. See In re Carteret Board of Education, supra, note 2. It is not clear on this record what exactly is envisioned by the Board; however, student activities are specifically included in the disputed paragraph.

would refuse to negotiate concerning the terms and conditions of employment as set forth in the Commission's decisions on point. If, in fact, the Board relies on the instant language to claim it may unilaterally increase workload, change other terms and conditions of employment or violates some existing contract clause or practice governing working conditions, the Association may take appropriate action consistent with the decisions of the Commission and the Courts. However, the disputed language of the job description herein does not in and of itself constitute a mandatorily negotiable subject.

ORDER

For the reasons stated herein the Commission finds that paragraph 14 of the job description for classroom teachers, as set forth above, is not a mandatorily negotiable term or condition of employment.^{5/}

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

January 17, 1980

ISSUED: January 18, 1980

^{5/} The request of the Board for an order directing the Association to refrain from advising its members to refuse to perform after school and extra-curricular activities is beyond the purview of a scope of negotiations proceeding. See Ridgefield Park, supra at 153-156 for a full discussion on this point.