

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUENA REGIONAL EDUCATION
ASSOCIATION,

Petitioner,

Docket No. SN-79-38

-and-

BUENA REGIONAL BOARD OF
EDUCATION,

Respondent.

SYNOPSIS

The Board of Education and the Education Association jointly initiated a scope of negotiations proceeding seeking a determination as to whether an issue concerning the change of a duty period to an additional teaching period is within the scope of collective negotiations.

In the past, teachers at the Cleary Junior High School were assigned a schedule of one lunch period, one preparation period, one non-teaching duty period, and five teaching periods. The Board desires to alter the teachers' schedule to six teaching periods, while continuing the duty free lunch period and the one preparation period.

Relying on numerous prior Commission and Court decisions, the Commission holds that the decision to assign teachers to an additional teaching period relates directly to a teacher's workload and is thus a mandatory subject for collective negotiations.

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Appearances:

For the Petitioner, Michael R. Mulkeen,
President, Buena Regional Education Assn.

For the Respondent, Shapiro, Eisenstat, Capizola,
O'Neill & Gabage, Esqs.
(Michael D. Capizola, of Counsel)

DECISION AND ORDER

On January 8, 1979 the Buena Regional Education Association (the "Association") and the Buena Regional Board of Education (the "Board") filed a joint Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a certain matter in dispute is within the scope of collective negotiations.

The relevant facts are uncontroverted in this proceeding. The dispute before the Commission arose during the course of collective negotiations for a successor agreement to replace the parties' prior contract which had expired on June 30, 1978. That agreement contained a clause, section 12-B, which guaranteed to teachers at the J.P. Cleary Middle School a duty free lunch

period and one preparation period. Under past practice the six remaining periods had been allocated to five teaching periods and one non-teaching supervisory duty period. The negotiations dispute concerns the mandatory negotiability of the decision to change the one duty period to an additional teaching period.

The statement of dispute in the parties' joint petition reads as follows:

The dispute basically centers around the assignment of teachers in the Dr. J.P. Cleary School. In the past, teachers at the Dr. J.P. Cleary School were teaching 5 out of 8 periods in most cases, with some teachers teaching 6 out of 8 periods in minor subjects. The remaining periods include a lunch period and a duty period and a preparation period for teachers teaching 5 periods and a lunch period and a preparation period for teachers teaching 6 periods. 1/

During the course of negotiations, the Board proposed that it intended to change the schedule so as to require all teachers to teach 6 periods with one duty-free lunch period and a preparation period.

Both parties have submitted legal argument on the issues presented. The Association 2/ argues that to assign an additional classroom teaching period to individuals who previously were assigned non-teaching duties, or preparation during that particular time period, directly relates to workload considerations and is a required subject for collective negotiations.

Initially the Board argues that there are factual distinctions which render the decisions in Byram and Maywood

1/ The dispute involves only those teachers who currently teach five periods with one non-teaching supervisory duty period.
2/ Citing Byram Twp. Bd. of Education v. Byram Twp. Education Association, 154 N.J. Super. 12 (1977), In re North Plainfield Education Association, P.E.R.C. No. 76-16, 2 NJPER 49 (1976), In re Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977), and In re City of Newark, P.E.R.C. No. 79-24, 5 NJPER (¶ 1979).

inapplicable to the present dispute.^{3/} The Board further contends that, since under the past practice teachers were assigned working duties for the entire six periods, the question of whether the work is to be a teaching period or a "duty" period is one that is not negotiable in view of the Board's inherent right to assign teachers to various duties.

Numerous Court and Commission decisions stand for the general principle that teacher workload is mandatorily negotiable.^{4/} While there are some factual differences between this matter and Byram and Maywood, they do not affect the applicability to the instant dispute of the principles established in those cases. In Byram the Court affirmed the Commission's decision that a proposal that teachers in departmental areas not teach more than five teaching periods or more than five hours per day related to a teacher's workload and, therefore, was a required subject for collective negotiations. Relying on this case, the Commission, in Maywood, concluded that a decision to assign an additional

3/ Citing In re North Plainfield Ed. Ass'n, P.E.R.C. No. 76-16, 2 NJPER 49 (1976) and Ridgefield Park Ed. Ass'n v. Ridgefield Park Board of Ed., 78 N.J. 144 (1978).

4/ In re Fairlawn Board of Ed, P.E.R.C. No. 79-44, 5 NJPER (¶ 1979); In re Newark Board of Ed., P.E.R.C. No. 79-38, 5 NJPER (¶ 1979); In re Lincoln Park Bd. of Ed., P.E.R.C. No. 78-88, 4 NJPER 111 (¶ 1978); In re Maywood Board of Ed., P.E.R.C. No. 78-23, 3 NJPER 377 (1977); In re City of Newark, P.E.R.C. No. 79-24, 4 NJPER (¶ 1979); In re Rahway Board of Ed., P.E.R.C. No. 79-30, 5 NJPER (¶ 1979); In re Byram Twp. Board of Ed., P.E.R.C. No. 76-27, 2 NJPER 143, affmd as mod., 152 N.J. Super. 12 (App. Div. 1977); Red Bank Board of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Burlington County College Faculty Ass'n Bd. of Trustees, 64 N.J. 1 (1973); In re Middlesex County College Board of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023, 1977); In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62 (1977).

classroom teaching period to individuals who previously were assigned non-teaching duties during that particular time period directly related to workload and is mandatorily negotiable.

In In re Newark Board of Education, P.E.R.C. No. 79-38, 5 NJPER ____ (¶ ____ 1979), a similar argument was presented that, since the period in question was not considered duty free time, it was within the Board's management prerogative to decide whether it would be a non-teaching, supervisory duty period, a preparation period, or a teaching period. The Commission concluded that, while teachers were required to use the period for educational purposes (i.e. preparation), there was still additional work to be performed considering the extra class to be taught. Therefore, the Commission concluded that the decision to change a preparation period to an additional teaching period had to be negotiated.

Whether the change is from a non-teaching, supervisory duty period or a preparation period, there is still a net increase in the number of teaching periods per day. The Commission doubts that the Board would seriously contest that a teaching period, in itself, requires more work than either a preparation period or a non-teaching supervisory duty period. The additional teaching period, unlike the other types of duty, generates further precedent and **subsequent** work in terms of additional class preparation, correction of tests and homework, preparation of report cards, other administrative paper work, etc. Accordingly, the Commission

concludes that any decision which would result in a change in the number of classroom teaching periods per day must be negotiated as it directly relates to workload.

This decision is to be distinguished from the decision in North Plainfield cited by the Board. There the decision was to substitute a teaching period in English for a writing conference period. There was no increase in the number of teaching periods. The Commission concluded that the decision to change the type of instruction given during the teaching period was a basic educational policy decision not subject to the mandatory duty to negotiate.^{5/} However, even in this case, the Commission concluded that this decision might have an effect on teacher workload. Accordingly, the effect of this decision on terms and conditions of employment, as opposed to the decision itself, was held to be mandatorily negotiable.

The Commission, in response to the Board's argument that the instant matter is a managerial prerogative involving basic educational policy, notes that the present decision does not interfere with the Board's right to decide to increase pupil instructional time. However, once the Board decides to implement this decision by increasing the number of classroom teaching periods per day there is a change in workload which is mandatorily negotiable. The crucial point is that the Board still retains the

^{5/} The decision in North Plainfield further held that this issue was a permissive subject for collective negotiation. The Supreme Court, in Ridgefield Park, having held that there is no permissive category, the decision in North Plainfield is modified only to that extent, i.e. the issue is not within the scope of collective negotiations.

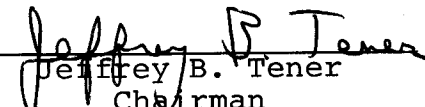
ability to accomplish its objective of increasing pupil instructional time through numerous other methods, including the hiring of additional teachers, which do not affect the working conditions (i.e. workload) of its employees. The Board also is free to propose as a mandatorily negotiable subject a change from a duty period to an additional teaching period in negotiations for a successor agreement and has no obligation to give in on this point.^{6/}

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the decision to change a non-teaching, supervisory duty period to an additional teaching period is a required subject for collective negotiations as it directly relates to workload.

Accordingly, the Buena Regional School District is hereby ordered to negotiate in good faith with and upon the request of the Buena Regional Education Association regarding any change in the number of teaching periods.

BY ORDER OF THE COMMISSION


 Jeffrey B. Tener
 Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Graves voted for this decision. None opposed. Commissioners Newbaker and Hipp abstained.

DATED: Trenton, New Jersey
 March 8, 1979
 ISSUED: March 9, 1979

^{6/} Council of N.J. State College Locals, 1 NJPER 39 (1976) affmd 141 N.J. Super. 470 (App. Div. 1976).