

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POINT PLEASANT BOROUGH  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-80-80

POINT PLEASANT BOROUGH  
TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission finds that the gravamen of the grievance involves the Board's decision to remove Compensatory Education Teachers from the English and Mathematics Departments and to reorganize them into a separate department under the supervision of the Principal, thereby relieving the two Department Chairpersons of their supervisory authority over these teachers. The Commission, in reliance on previous Commission and court decisions, concludes that reorganization of the departmental structure and reassignment of supervisory duties are non-negotiable educational policy decisions. Accordingly, the Commission grants the Board's request for a permanent restraint of arbitration.

P.E.R.C. NO. 80-145

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Appearances:

For the Petitioner, Metzler Associates  
(Dr. Stanley C. Gerrard, on the Brief)

For the Respondent, Starkey, Kelly, Cunningham,  
Blaney & Ward, Esqs.  
(Mr. James M. Blaney, on the Brief)

DECISION AND ORDER

On January 31, 1980 the Point Pleasant Borough Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission requesting a determination as to whether a certain matter in dispute between the Board and the Point Pleasant Borough Teachers Association (the "Association") is within the scope of collective negotiations. The instant dispute arose with respect to certain matters which the Association has submitted to binding arbitration under the parties' contractual grievance procedure. The Board has objected to binding arbitration on the basis that the issue in dispute is not a term and condition of employment.

The petition states that the grievance sought to be arbitrated concerns management's decision to reorganize the structure of its compensatory education program in order to achieve better supervision of it and to improve pupil education and compensatory education teacher performance. Supervision of the program had been the responsibility of department chairpersons; it would now become the direct responsibility of the building principal.

The Association, by letter dated November 7, 1979, submitted a grievance which alleges that the Board's conduct with regard to the compensatory education program constitutes: (1) an arbitrary reduction of personnel in the two affected departments; (2) a violation of Articles 1, 6, 7, 8, 14, 15 and 20 of the Department Heads Job Description; and (3) a violation of Article 10 of the Attachment to Department Heads Job Description.<sup>1/</sup>

<sup>1/</sup> The Department Heads Job Description and the Attachment to Department Heads Job Description are addenda to the 1978-1980 collective negotiations agreement between the Board and Association. The articles cited by the Association in its grievance are as follows:

Department Head Job Description

PERFORMANCE  
RESPONSIBILITIES

1. Establishes curriculum objectives for the department. Filed with the Principal.
6. Manages an up-to-date inventory of department materials, filed with the Principal.
7. Prepares preliminary departmental budget needs, purchase orders, etc., and submits them to the Principal.
8. Prepares teacher assignments and submits recommendations on same to the principal and acts as a consultant on any scheduling changes or problems.

(continued)

However, the Request for Submission of a Panel of Arbitrators, submitted by the Association to this Commission on January 7, 1980, is inconsistent with the Association's November 7, 1979 letter which initially presented the grievance to the Board. The former states that the nature of the grievance relates to assigning work out of the bargaining unit.

The Board and Association submitted briefs on January 31, 1980 and March 3, 1980 respectively.

The Board contends that the reorganization of its departmental structure and compensatory education program, as well as the reassignment of supervisory duties over this program, are major educational policy matters which are non-negotiable and hence nonarbitrable. To support this argument, the Board cites Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed, 78 N.J. 144 (1978); In re Maywood Board of Ed, 168 N.J. Super. 45 (App. Div. 1979) and Dunellen Board of Ed. v. Dunellen Ed. Assn, 64 N.J. 17 (1973).

1/ (continued)

14. In conjunction with the Principal, Department Heads will recruit, screen, and recommend employment of department personnel.
15. Assists the Principal in interpreting general student grading and student promotional policies.
16. Works with supervisor and administrative staff to develop and implement the functions of T & E.

Attachment to Department Heads Job Description

10. Vacant positions will be posted by the Board of Education in accordance with the Agreement.

The Association contends that the Board's conduct constituted an arbitrary reduction of personnel in the English and Mathematics Departments, which resulted in an alteration of the Department Heads' workloads. The Association does not contest the Board's management prerogative to assign certain tasks to particular employees. Rather, the Association argues that the thrust of its grievance is to determine whether a change in the workloads of the two Department Heads is a mandatorily negotiable term and condition of employment. The Association cites the Commission's statement from In re Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), that "shift work from employees within a bargaining unit to other employees outside the unit is a mandatory subject of negotiations" and argues that the decision to shift supervision of the compensatory education teachers from the Department Heads to the Principal <sup>2/</sup> is a mandatorily negotiable subject and hence arbitrable.

After reviewing the petition, the Association's November 7, 1979 letter presenting the grievance and the January 7, 1980 submission to arbitration, the Commission finds that the gravamen of the grievance involves the Board's decision to transfer the Compensatory Education Teachers from the English and Mathematics Departments to a separate department under the direct supervision of the Principal, thereby relieving the two Department Chairpersons of their supervisory authority over those teachers.

<sup>2/</sup> The Department Heads are specifically included in the unit represented by the Association, while Principals, being administrative personnel, are excluded.

It is well established that decisions concerning (1) reorganizing the departmental structure; (2) restructuring particular programs; and (3) reassigning supervisory duties from one group of employees to another are all major educational policy matters beyond the scope of negotiations. In re East Orange Board of Education, P.E.R.C. No. 79-62, 5 NJPER 190 (¶10107 1979); In re Delaware Valley Regional H.S. Dist. Bd of Ed., P.E.R.C. No. 79-65, 5 NJPER 183 (¶10100 1979); In re Freehold Reg. H.S. Bd of Ed, P.E.R.C. No. 78-29, 5 NJPER 19 (¶4010 1977); Union City Bd of Ed v. Union City Teachers Assn, 145 N.J. Super. 435 (App. Div. 1976), cert. denied 74 N.J. 248 (1977); and Dunellen Board of Ed. v. Dunellen Ed. Assn, 64 N.J. 1 (1973). Therefore, the Association cannot submit to binding arbitration <sup>3/</sup> the question of whether the Board acted arbitrarily and capriciously in deciding to remove the Compensatory Education Teachers from the English and Mathematics Departments and to reorganize them into a separate department under the supervision of the Principal. An attempt to compel the Board to alter its decision on this ground would more properly be processed through administrative channels established by the Commissioner of Education, rather than the binding arbitration process. In re Board of Ed. ov the City of Englewood, 150 N.J. Super. 265 (App. Div. 1977), cert. den. 75 N.J. 525 (1977).

<sup>3/</sup> Under the decisions in Township of West Windsor v. PERC, 78 N.J. 98 (1978) and Bd. of Ed. Bernards Twp. v. Bernards Twp. Ed. Assn, 79 N.J. 311 (1979), only grievances involving terms and conditions of employment can be submitted to binding arbitration.

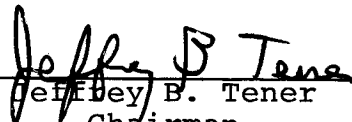
The Association is correct that in some previous decisions the Commission has held that the shifting of work from unit members to employees outside the unit is mandatorily negotiable. However, those cases did not arise in the context such as this <sup>4/</sup> where the apparently undisputed motivation for the action was an educational policy judgment of the Board. The Board's decision to transfer supervision of the Compensatory Education Teachers from the Department Chairpersons to the Principal did have the incidental effect of shifting some unit work to a non-unit employee. But this effect is inextricably linked with the Board's major educational policy decision to reorganize the departmental structure and to restructure supervision of the compensatory education program. Accordingly, any shifting of work out of the unit in this context is incidental to and an unavoidable consequence of the educational policy judgment and hence nonarbitrable. Bd. of Ed. of Woodstown-Pilesgrove Reg. Sch. District. v. Woodstown-Pilesgrove Reg. Ed. Assn, 81 N.J. 582 (1980).

<sup>4/</sup> This case is distinguishable from the cases cited by the Association. In the cited cases, jobs were taken from bargaining unit employees who were replaced by non-unit employees primarily for economic reasons. In this case, what is involved is who does the supervision of employees who, both before and after the reorganization, remain in the unit represented by the Association. Thus, unit jobs are not being replaced by non-unit jobs, but rather the employer has decided to revise its supervisory structure. Such decisions are an integral part of managerial responsibility.

ORDER

For the aforementioned reasons, IT IS HEREBY ORDERED that the request of the Point Pleasant Borough Board of Education to permanently restrain arbitration of the Association's grievance in the instant matter is granted.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Graves, Newbaker and Hipp were not present.

DATED: Trenton, New Jersey  
May 20, 1980

ISSUED: May 22, 1980