

P.E.R.C. NO. 87-109

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BAYONNE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-43

BAYONNE TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, a request by the Bayonne Board of Education to restrain binding arbitration of a grievance filed by the Bayonne Teachers Association. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it required mathematics teachers to make copies of department-wide examinations without additional compensation. The Commission finds that the tasks of reproduction and distribution are incidental to the primary objective of test development and therefore there was no negotiations obligation over the assignment to reproduce and distribute the exam. The Commission further holds, however, that the compensation claim for the alleged workload increase may be submitted to binding arbitration.

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Appearances:

For the Petitioner, Appruzzese, McDermott, Mastro & Murphy,
Esqs. (Francis A. Mastro & Robert T. Clarke, of counsel)

For the Respondent, Bucceri & Pincus, Esqs.
(Louis P. Bucceri, of counsel)

DECISION AND ORDER

On January 21, 1986, the Bayonne Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bayonne Teachers Association ("Association"). The grievance alleges that the Board violated its collective negotiations agreement with the Association when it required mathematics teachers to make copies of department-wide examinations without additional compensation.

Both parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's non-supervisory teaching staff members.^{1/} The Board and

^{1/} The Association's unit includes teachers, guidance counselors, psychologists, librarians, nurses, social workers, part-time teachers under contract and coordinators.

the Association have entered a collective negotiations agreement, effective from September 1, 1984 through August 31, 1987, which contains a grievance procedure ending in binding arbitration.

Prior to January 1985, high school mathematics teachers prepared, reproduced and administered their own examinations for each of their assigned math classes. In January 1985 the Director of Mathematics, Audrey Langan, decided to standardize mid-term and final exams. Fifteen committees (one for each course) of math teachers were established to develop, reproduce and circulate a standardized exam for each course. Each teacher was a member of two to three committees. The procedure was used for the January 1985 mid-term examinations and was to be used again for the June 1985 final examinations. Math department meetings scheduled for February, March and April were cancelled so that teachers would have release time for these committee assignments; release time had not been given teachers preparing examinations for their own classes. The committees were told to submit their draft exams to Langan for approval by May 19, 1985 and to provide each teacher with 35 copies of the approved exams, answer key and answer sheets by May 31, 1985. All committees except for the "General Math 9" group complied with the directives on time.

On June 3, 1986 Langan sent a memo to the three teachers on the "General Math 9" committee. She acknowledged that the committee had met and prepared an exam and answer sheet,^{2/} but asserted that

2/ A neatly printed seven page exam and one page answer key was attached to Langan's certification.

the committee had not distributed copies of the exam to the 12 course sections of General Math 9. The memo directed that the exams be distributed. A day later, George Schneider, the chairman of the committee, wrote a memo stating that "TEACHERS ARE NOT REQUIRED TO DO DEPARTMENTAL CLERICAL WORK." (Upper case in original). The memo said that the committee would reproduce the exam but would also file a grievance seeking "reimbursement for time and materials." Schneider submitted a demand for the payment of \$140.00 representing four hours work to xerox and distribute the exams.

The Association filed a grievance contesting the directive that math teachers perform clerical work and seeking payment for the work performed. The grievance was denied and the Association demanded arbitration. This petition ensued.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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.
[Id. at 154]

Thus we do not decide the contractual merits of this grievance or any defenses the Board may have.

It is not unusual for disagreements to arise in the educational setting which concern the performance of duties not directly related to actual classroom performance. In Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977), we drew a distinction between non-teaching duties (morning playground, bus, student lunch and recess duties) which relate to student safety, security and control and non-teaching duties involving custodial functions (moving furniture or supplies) which do not relate to student safety, security and control. The latter are mandatorily negotiable, the former are not. The reason for the distinction is obvious. When duties congruently involve the relationship of teachers and students, they are part of the teachers' primary functions of educating students and providing for their welfare and educational policy is the dominant element. When, however, duties do not involve that relationship and instead are clerical or custodial, then the teachers' primary functions are not implicated and the mandatory subject of workload is the dominant concern. Wright v. City of E. Orange Bd. of Ed., 99 N.J. 112, 121 (1985).

We have also recognized that employees may be required to perform minor tasks incidental to their primary duties. Thus, for example, police officers may be required to check the oil and change flat tires on patrol cars. Mercer Cty. Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980). See also City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300, 302 (¶16106 1985) (assignment of

firefighters to school crossing and patrol duties connected to firefighting); Tp. of W. Orange, P.E.R.C. No. 83-4, 8 NJPER 447 (¶13210 1982) (assignment of firefighters to safety patrol duties); Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984) (assignment of gas pumping duties to bus drivers).

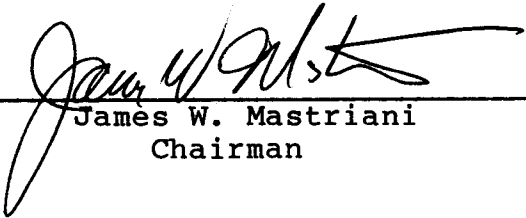
Here, the tasks of reproduction and distribution are clerical. But, under all the circumstances of this case, we hold that they are incidental to the primary objective of test development: in particular, teachers had always copied and collated their own examinations; the tasks are performed only twice a year and may be shared among all committee members; and teachers have been relieved of the responsibility of preparing individual exams and have received release time from other duties for committee work. Thus, under these circumstances, we do not find a negotiations obligation over the assignment to reproduce and distribute the exam. The compensation claim for the alleged workload increase may, however, be submitted to binding arbitration. Monroe.^{3/}

^{3/} We recognize the Board denies that workload has been increased. That defense should be addressed to the arbitrator.

ORDER

The Board's request for a restraint of arbitration is granted except to the extent the grievance seeks compensation for the alleged workload increase.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson and Wenzler voted in favor of this decision. Commissioner Smith was opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987