

P.E.R.C. NO. 92-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-49

TRENTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Trenton Education Association against the Trenton Board of Education. The grievance asserts that teachers at a middle school were deprived of their contractual right to duty-free lunch and preparation periods. Specifically, the grievance claims that a principal has routinely planned assemblies conflicting with lunch and preparation periods and has thus abused an emergency exception in the collective negotiations agreement. The Commission finds the claim mandatorily negotiable but notes that an award could not interfere with the Board's obligation to provide for student safety.

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Appearances:

For the Petitioner, Sumners, Council & Inniss, attorneys
(Thomas W. Sumners, Jr., of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On November 1, 1991, the Trenton Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance which the Trenton Education Association has filed. The grievance asserts that teachers at Middle School Number Two have been deprived of their contractual right to duty-free lunch and preparation periods.

The parties have filed an affidavit, exhibits, and briefs. These facts appear.

The Association is the majority representative of the Board's teachers. The Board and the Association entered into a collective negotiations agreement effective from September 1, 1988

to August 31, 1991. Section B of Article XII specifies that secondary school teachers shall have a duty-free lunch period with a minimum time equivalent to the length of the students' lunch period in conformance to state law. Section C provides:

All secondary teachers shall, in addition to their lunch period, have at least one (1) preparation-conference period each day, during which they shall not be assigned to any other duties, except in times of emergencies.

Section F provides that exceptions to sections B and C may be made only in case of emergency. The grievance procedure ends in binding arbitration of grievances alleging specific contractual violations.

On February 26, 1991, the Association filed a grievance. It asserted that the contractual right of middle school teachers to duty-free lunch and preparation periods had been violated on an ongoing basis. It requested that such violations be stopped.

On May 7, 1991, the Board's president conducted a hearing. The Association submitted documentation a week later. That documentation asserted that teachers had lost lunch or preparation periods on February 7, 19, 26, 27 and 28 because they were required to supervise assembly programs. The cover letter asserted that "planned assembly programs" cannot be classified as emergencies.

On or about May 31, the Board's president denied the grievance. He found that no evidence indicated an ongoing pattern of disallowing teacher preparation periods^{1/} and that the middle school principal had properly handled an incident when all Middle

^{1/} The Association disputes this finding.

School Number Two teachers were assigned to assembly duty during a play. The play went longer than expected and ran into a teacher preparation/lunch period, but the principal ordered the staff to stay. The play ended 20 minutes later. The principal dismissed teachers one-half hour early that day.

The Association demanded binding arbitration. It identified the grievance as "loss of prep and lunch periods." This petition ensued.

The Board asserts that it has a prerogative to infringe upon lunch and preparation periods when it needs teachers to respond to emergencies and that the play was such an emergency. The Association does not dispute that the Board has a prerogative to respond to emergencies, but it asserts that an emergency cannot be said to exist when assemblies are scheduled in advance to run into lunch and preparation periods. It reiterates that it is challenging an ongoing pattern of infringing upon lunch and preparation periods. In addition to the five days in February 1991, it asserts that teachers lost preparation periods because of assemblies on four days in the fall of 1990 and seven days in the spring of 1991. It asserts that an arbitrator may determine whether or not an emergency existed on these days.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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 cannot determine the merits of the grievance or the Board's defenses.

Duty-free lunch and preparation periods are, in general, mandatorily negotiable. But it is also well-established that school boards have a managerial prerogative to assign teachers to supervise students during emergencies, even if those assignments infringe upon lunch and preparation periods. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977), upheld such a prerogative, stating, "the safety and well-being of the student body and the correlative maintenance of order and efficiency are matters of major educational policy which are management's exclusive prerogative." See also East Newark Bd. of Ed., P.E.R.C. No. 82-120, 8 NJPER 369 (¶13168 1982); Salem City Bd. of Ed., P.E.R.C. No. 82-115, 8 NJPER 355 (¶13163 1982); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 81-58, 6 NJPER 548 (¶11278 1980).

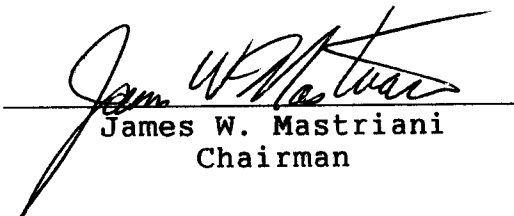
The Board asserts that the principal had a non-negotiable prerogative to require the teachers to stay in the auditorium when the play ran beyond its expected finish and into the preparation/lunch period. We will assume that this proposition is correct. But the Association's claim goes beyond that one incident

and asserts that the principal has routinely planned assemblies conflicting with lunch and preparation periods and has thus abused the emergency exception in Article XII. That claim is mandatorily negotiable and legally arbitrable. We will not speculate about what remedy might be appropriate should a violation be found. But we note that an award could not interfere with the Board's obligation to provide for student safety.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. Commissioner Grandrimo voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: February 19, 1992
Trenton, New Jersey
ISSUED: February 20, 1992