

P.E.R.C. NO. 97-151

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL
DISTRICT OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-97-55

JERSEY CITY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State-Operated School District of Jersey City for a restraint of binding arbitration of a grievance filed by the Jersey City Education Association. The grievance alleges that the District violated the parties' collective negotiations agreement when it unilaterally increased the workload of high school staff by implementing a block schedule. The Commission grants the request to the extent the grievance seeks to prohibit the District from implementing block scheduling. The request is denied to the extent the grievance seeks compensation for increased workload.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 97-151

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL
DISTRICT OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-97-55

JERSEY CITY EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Respondent, Feintuch, Porwich & Feintuch,
attorneys (Philip Feintuch, of counsel)

DECISION AND ORDER

On December 16, 1996, the State-Operated School District of Jersey City petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the Jersey City Education Association. The grievance alleges that the District violated the parties' collective negotiations agreement when it unilaterally increased the workload of high school staff by implementing a block schedule.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the District's certified personnel and attendance counselors. The parties entered into a

collective negotiations agreement effective from September 1, 1995 through August 31, 1998. The grievance procedure ends in binding arbitration of contractual disputes. Article 19 is entitled Teaching Conditions. Subsection 2.1 provides:

The normal academic load of a teacher in the high schools shall consist of five (5) teaching periods, a homeroom, and a special assignment. In physical education, industrial arts, and other double-period subjects areas, variation from the normal must occur.

Subsection 2.2 provides:

A teacher at the high school who volunteers for, and accepts, an additional permanent teaching assignment at the high school shall receive an annual stipend of \$6,500 for teaching such class during his/her duty free period or the period prior to or after the regular school day. If the sixth (6th) teaching period is during the teacher's normal duty period, the annual stipend is \$5,000.

Subsection 6 provides:

The in-school work day for all teachers shall consist of not more than five (5) hours and forty-five (45) minutes which shall exclude a duty-free lunch period.

Subsection 7 provides:

All teachers in the high schools shall have a duty-free lunch period of at least forty-five (45) minutes, except in instances where temporary scheduling (e.g. assembly days) may lessen the time for both pupils and teachers.

During the 1994-95 school year, the acting State district superintendent became concerned about low test scores, low attendance, and high drop-out rates at the high schools. As a result, he directed the State assistant superintendent to develop a plan to ameliorate these three deficiencies.

The assistant superintendent recommended an intensified block scheduling plan known as the Copernican Plan. Under this plan, the number of periods attended by a high school student daily decreases, but the length of the periods attended increases. According to research relied upon by the district, the plan results in more in-depth learning, better student-teacher relationships, a more varied education for individual students, and a significant reduction in the student/teacher ratio.

The pre-Copernican Plan school day was divided into eight 45 minute periods. Under the Copernican Plan, most teachers will teach three periods of 80 minutes each with teachers receiving a 45-minute duty-free lunch period, a 45-minute preparation period, and a duty period of 35 minutes, reduced from the previous 45 minutes. While the total instructional time increases under the plan, the parties disagree as to the amount of the increase.

The Association participated in the study of the plan and its implementation. The Association claims that throughout the pre-implementation period, the District represented that affected teachers would be appropriately compensated if implementation were to occur and that Article 19, subsection 2.2 was negotiated with that possibility in mind. The District denies this allegation and contends that under the collective negotiations agreement no additional compensation was appropriate since there was no increase in the school day nor additional duties.

On January 12, 1996, the District's five year strategic plan, which included the new block scheduling plan, was approved by the Commissioner of Education. The acting superintendent directed that the Copernican Plan be implemented for the 1996-97 school year.

On July 31, 1996, the Association filed an unfair practice charge against the District alleging violations due to the unilateral implementation of the new schedule. It claims that the plan requires additional duties, responsibilities and pupil contact and that the District must therefore negotiate over increases in compensation.

On August 6, 1996, the Association filed an application for interim relief seeking to restrain the District from unilaterally implementing the work schedule until the parties negotiated over compensation. The application was denied. A hearing on the unfair practice charge has been scheduled.

Additionally, the Association filed a grievance seeking extra compensation for the increase in teaching time under the Copernican Plan.^{1/} The Board denied the grievance, and on August 22, 1996, the Association demanded arbitration. The issue as framed by the demand for arbitration is:

Did the Jersey City Board of Education violate the collective bargaining agreement when it unilaterally increased the work load of all high school teachers by implementing a block schedule?

^{1/} We reject the District's argument that the filing of the charge warrants restraint of arbitration on related issues.

This petition ensued.

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.

Thus, we cannot consider the merits of the grievance or any contractual defenses the District might raise.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

No statute or regulation is asserted to preempt negotiations.


We have recently held that a school board has a prerogative to determine the structure of the school day and to establish block scheduling. South Brunswick Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238 (¶28114 1997). There is no dispute that the Copernican Plan is a matter of educational policy. Therefore, to the extent the Association seeks to arbitrate the District's prerogative to implement the plan, we restrain binding arbitration.

However, the issue of possible additional compensation for the increased workload is severable and mandatorily negotiable. Id. at 239; see also Willingboro Bd. of Ed., P.E.R.C. No. 97-78, 23 NJPER 36 (¶28025 1996). Accordingly, to the extent the Association's grievance raises that issue, we decline to restrain arbitration.

ORDER

The District's request for a restraint of binding arbitration is granted to the extent the grievance seeks to prohibit the District from implementing the Copernican Plan. The request is denied to the extent the grievance seeks compensation for increased workload.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz abstained from consideration. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997
Trenton, New Jersey
ISSUED: June 20, 1997