

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANCHESTER REGIONAL EDUCATION  
ASSOCIATION, NJEA,

Petitioner,

-and-

Docket No. SN-80-78

MANCHESTER REGIONAL HIGH SCHOOL  
DISTRICT BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, orders the Manchester Regional High School District Board of Education to negotiate in good faith with the Manchester Regional Education Association with regard to the matter of compensation for the performance of supervisory chaperone duties. The Chairman concluded, consistent with prior Commission and judicial decisions, that negotiations on the issue of compensation in no way intrudes upon major educational policy decisions of the Board and clearly relates to a mandatorily negotiable subject.

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Appearances:

For the Petitioner, Zazzali, Zazzali & Whipple, Esqs.  
(Mr. Albert G. Kroll, of Counsel)

For the Respondent, Samuel A. Wiener, Esq.

DECISION AND ORDER

On January 29, 1980 a Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission by the Manchester Regional Education Association ("Association") alleging a dispute with the Manchester Regional High School District Board of Education ("Board") as to the negotiability of a particular issue. On September 21, 1979, an administrative memorandum was disseminated to teaching staff members advising teachers that each faculty member was required to serve as a chaperone for one of the following events: Christmas Concert, Winter Concert, All School Play (2 days), Spring Concert and Yearbook Reception.<sup>1/</sup> The Association

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<sup>1/</sup> Apparently these assignments were previously staffed by volunteers from among the teachers who received no additional compensation for this work. The Association perceived the memo as enunciating a specific change in existing school policies affecting the terms and conditions of employment of teaching personnel, i.e. that all faculty members were required now to select one event to "cover".

initially sought to negotiate the assignments themselves but in a letter dated February 22, 1980 specifically advised the Board that it was seeking only to negotiate compensation for the increase in teacher workload/hours resulting from mandatory assignments to certain extracurricular activities.

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Pursuant to N.J.S.A. 34:13A-5.4(f), the Commission has delegated to its Chairman the authority to issue scope of negotiations decisions when the negotiability of the issue in dispute has been previously determined by the Commission and/or the judiciary. Briefs were filed by the parties by March 20, 1980.

Recently the Commission has issued several decisions which cover the topic raised herein: In re Bd of Ed, Mainland Reg. H.S. District, P.E.R.C. No. 80-8, 5 NJPER 301 (¶10162 1979), appeal pending App. Div. Docket No. A-4566-78; In re Ramapo-Indian Hills H.S. Dist. Bd of Ed, P.E.R.C. No. 80-9, 5 NJPER 302 (¶10163 1979), appeal pending App. Div. Docket No. A-4613-78; In re Montvale Board of Education, P.E.R.C. No. 80-63, 5 NJPER 535 (¶10275 1979); In re Northvale Board of Education, P.E.R.C. No. 80-79, 6 NJPER 13 (¶11007 1980), appeal pending App. Div. Docket No. A-1590-79 and In re Marlboro Board of Education, P.E.R.C. No. 80-128, 6 NJPER (¶\_\_\_\_\_ 1980). In these decisions the Commission acknowledged the clash between the status of work hours as a term and condition of employment and the right of a board to assign extra-curricular duties under Ridgefield Park Ed. Assn v. Ridgefield Park Bd of Ed, 78 N.J. 144 (1978).

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The Commission has consistently determined that boards of education can unilaterally determine extra-curricular assignments, which are illegal subjects of collective negotiations, and need not negotiate the resulting increase in work hours. The Commission has, however, held that compensation for extra-curricular duties as well as increased workload, to the extent that it was severable from the hours that these activities were to be performed, was mandatorily negotiable.

The Board concedes that compensation relating to certain extra-curricular assignments is mandatorily negotiable but maintains that specific activities, not listed in Schedule C of the parties' contract, including chaperone responsibilities at school functions, are an essential part of a thorough and efficient system of education and are to be performed without special remuneration. The Board in this regard asserts that the Association waived its right to negotiate compensation for activities not set forth in Schedule C and relies on the past practice within the district of performing chaperone duties without additional pay in partial support of its contention that compensation for these particular supervisory responsibilities is non-negotiable.

The New Jersey Supreme Court in Ridgefield Park Ed. Assn v. Ridgefield Park Bd of Ed, 78 N.J. 144, 153-156 (1978), discussed the proper procedure in resolving scope of negotiations cases and cited approvingly the Commission's description of its role in such cases:

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." 78 N.J. 154.  
(emphasis added)

In a non-adversarial scope of negotiations proceeding the Commission will not deal with issues such as the waiver and estoppel defenses raised by the Board in the instant matter.

The Board cites a recent Supreme Court decision, Bd of Ed of Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Ed Assn, 81 N.J. 582 (1980) in support of its position that the impact or effect of the exercise of a managerial prerogative such as the right to assign teachers to extra-curricular activities is likewise an illegal subject for collective negotiations since the dominant issue involved relates to educational goals. The undersigned, however, is satisfied that the Woodstown-Pilesgrove decision fully supports the determination that compensation aspects of extra-curricular assignments are mandatorily negotiable.

The Supreme Court in Woodstown-Pilesgrove, supra, enforced an arbitrator's decision requiring the Board of Education to pay teachers for an additional two hours worked by the teachers due to the extension of the work period for

teachers on the day before the Thanksgiving holiday. The Supreme Court concluded that notwithstanding that the dispute arose as a result of the Board's managerial decision relating to the school calendar, the dispute concerned terms and conditions of employment as the facts did not demonstrate that any "significant educational purpose" was at stake. Id. at 593-594. Moreover, the Appellate Division, citing the Woodstown-Pilesgrove decision, affirmed the Commission's decision in In re Newark Board of Education, P.E.R.C. No. 79-24, 5 NJPER 41 (¶10026 1979) where we held that although teachers were expected to pursue educationally related activities during preparation periods, the elimination of a preparation period to be replaced by a period of student contact was a change in teacher workload which was a mandatorily negotiable subject.<sup>2/</sup> The Appellate Division in Newark, supra, concluded that a teacher's workload was a term and condition of employment which was mandatorily negotiable, even though the change in workload was caused by a change in educational policy. Slip opinion at pages 5-6.

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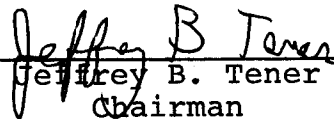
<sup>2/</sup> N.J. Super. \_\_\_\_, Docket No. A-2060-78, decided 2/26/80. The Board in its brief cited Maywood Board of Education and Maywood Education Assn, 168 N.J. Super. 45 (App. Div. 1979), for the proposition that increases in "pupil contact time" was non-negotiable. To the contrary, the Appellate Division in that case affirmed PERC's decision that the extent of teacher-pupil contact time is mandatorily negotiable. The court merely remanded this particular aspect of the case back to PERC for findings of fact concerning whether additional assignments of pupil contact time to two physical education teachers exceeded the terms of the contract and the past practices of teachers in the district. It must be noted in passing that the Maywood case related to an unfair practice charge filed by the Association against the Board and it was therefore appropriate to consider the Board's contractual and past practices defenses.

In light of the above decisions, the undersigned concludes that the mere request for negotiations on the issue of compensation<sup>3/</sup> when the Board's right to assign chaperone responsibilities is conceded to be a managerial prerogative, in no way intrudes upon major educational policy decisions of the Board and clearly relates to a mandatorily negotiable subject.<sup>4/</sup>

ORDER

For all of the foregoing reasons, IT IS HEREBY ORDERED that the Manchester Regional High School District Board of Education negotiate in good faith concerning the matter of compensation for the performance of the supervisory chaperone responsibilities at issue.<sup>5/</sup>

BY ORDER OF THE COMMISSION

  
Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
April 25, 1980

- 3/ A finding that something is negotiable does not obligate an employer to agree to a proposal. In re Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State of New Jersey, E.D. No. 79, 1 NJPER 39 (1975), aff'd sub nom, State v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976).
- 4/ To reiterate, the Supreme Court affirmed an arbitration award in the Woodstown-Pilesgrove matter that ordered the Board to pay teachers additional money for the two additional hours worked. In the instant matter the Association is simply seeking negotiations on the issue. The Association has neither filed an unfair practice nor a grievance seeking an award of money for the performance of these chaperone responsibilities. The Association has selected the least intrusive method -- the filing of a scope of negotiations petition and the seeking of negotiations -- to obtain compensation for the performance of certain supervisory responsibilities.
- 5/ The Board's request for an evidentiary hearing pursuant to N.J.A.C. 19:13-3.6 is hereby denied. There are no substantial and material disputed factual issues in this case that would require such a hearing. The issue is a purely legal one.