

P.E.R.C. NO. 86-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINCOLN PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-30

LINCOLN PARK EDUCATION ASSOCIATION ,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, declines to restrain binding arbitration of a grievance filed by the Lincoln Park Education Association. The grievance alleged that the Lincoln Park Board of Education violated a collectively negotiated agreement by requiring elementary school teachers to remain with their classes while the students were receiving instruction from another teacher in a computer lab, thus depriving the teachers of preparation time.

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Appearances:

For the Petitioner, Feldman, Feldman, Hoffman & Fiorello,
Esqs. (Peggy M. O'Dowd, of Counsel)

For the Respondent, Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, of Counsel)

DECISION AND ORDER

On November 20, 1985, the Lincoln Park Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance which the Lincoln Park Education Association ("Association") filed. The grievance alleges that the Board violated a collectively negotiated agreement by requiring elementary school teachers to remain with their classes while the students were receiving instruction from another teacher in a "computer lab", thus depriving the teachers of preparation time.

The parties have filed briefs, reply briefs and exhibits. The following facts appear.

The Association is the majority representative of the Board's teachers, nurses, guidance personnel and librarians. The Board and the Association are parties to a collective negotiations agreement effective from September 1, 1983 through August 31, 1985. That agreement contains a grievance procedure which ends in binding arbitration.

The Board instituted a curriculum in computers for elementary school students for the 1985-1986 school year. It purchased equipment, set up a computer lab and hired an instructor to teach the program. Regular classroom teachers brought their students to the computer lab to receive instruction from the computer "specialist." The Board requires that teachers remain in the computer lab with their students while the class has its weekly computer lesson. The teachers do not remain with their classes when other "specialty" subjects such as physical education, music, and art are taught by specialists. Elementary school teachers received in-service training in computer instruction in the Spring of 1985 and they are also scheduled to begin additional computer courses.

On September 13, 1985, the Association filed a grievance alleging that requiring elementary teachers to remain with their students in the computer lab violated past practice and the agreement by decreasing preparation time. The grievance requested the Board to cease the practice and compensate teachers for the lost preparation time. The Board denied the grievance, the Association demanded arbitration and the instant petition ensued.

The Board contends that the grievance is not arbitrable because it predominantly concerns its non-negotiable right to establish a new curriculum and facilitate its instruction. The Board asserts that the presence of both the classroom teacher and the computer specialist permits more individualized student instruction.

The Association maintains that the weekly computer lab is subject to the same practice as exists with the other specialty classes -- the teachers are entitled to preparation time while the specialist is with the class. The Association contends that the grievance is arbitrable because preparation time is a mandatorily negotiable term and condition of employment.

At the outset of my analysis, I stress the narrow boundaries of the Commission's 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 In re 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 154.1/

1/ Accordingly, I do not consider the Board's contentions that: (1) there is no merit to the allegation that there has been a loss in contractual preparation time and (2) the Association unsuccessfully attempted to negotiate contract language guaranteeing them preparation time while their students were in the computer lab.

Local 195 IFPTE v. State, 88 N.J. 393, 404-405 (1982)

articulates the test for determining negotiability.

...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.


Teacher preparation time is a mandatorily negotiable subject. Byram Twp. Bd. of Ed. and Byram Twp. Ed. Ass'n, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (App. Div. 1977). In Newark Bd. of Ed. and Newark Teachers Union, Local #481, AFT, AFL-CIO, P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), reconsideration den., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), affmd App. Div. No. A-2060-78 (2/26/80) the Appellate Division held arbitrable a grievance challenging a requirement that classroom teachers be present while their students were instructed by specialists. The grievance filed Newark also alleged that the teachers had lost preparation time. Newark controls: this grievance relates to a mandatorily negotiable subject and may be arbitrated.

Accordingly, acting under authority delegated to the Chairman by the full Commission, I deny the Board's request.

ORDER

The Board's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 3, 1986