

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-79-27

NEWARK TEACHERS UNION, LOCAL
481, A.F.T./AFL-CIO,

Respondent.

SYNOPSIS

In an Interlocutory Decision the Special Assistant to the Chairman refuses to restrain and enjoin the arbitration of a grievance filed by the Newark Teachers Union relating to the issue of teacher preparation periods. He concludes that the issue of teacher preparation periods relates directly to a teacher's workload and is thus a mandatory subject for collective negotiations. The Special Assistant also finds that the Newark Teachers Union is thus within its right to pursue the instant grievance through arbitration.

The Special Assistant's decision relates solely to the Board's request for a temporary stay of arbitration. The ultimate administrative decision on the merits of the dispute in the instant scope of negotiations proceeding still rests with the entire Commission.

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INTERLOCUTORY DECISION

This matter being opened to the Public Employment Relations Commission by Cecil J. Banks, General Counsel for the Petitioner (Lois M. Kauder, Associate Counsel, appearing) and the undersigned designee of the Commission having read the duly verified Petition for Scope of Negotiations Determination and the affidavits and exhibits annexed thereto, and having considered the arguments of the parties, it is hereby

ORDERED that the Board of Education's request for an order restraining and enjoining arbitration of Grievance #1593 be denied.

Previous Commission decisions have stated that the function of the undersigned in a request for an interim restraint of arbitration is limited to a determination as to whether there is any reasonable basis for the contention of a public employer that the matter in dispute may be found not to be within the scope of

collective negotiations and therefore not arbitrable. In such circumstances, the requested order will issue.

The Board of Education in its Scope of Negotiations Petition frames the negotiability issue germane to Grievance #1593 as follows: "Are preparation periods a mandatory subject for collective negotiations or a non-negotiable matter of governmental policy."

The undersigned concludes, after careful consideration of the test set forth in Dunellen Ed. Assn. v. Dunellen Board of Education, 64 N.J. 17, 25 (1973) and reaffirmed in State v. State Supervisory Employees Assn, ___ N.J. ___ (A-176/190 Sept. Term 1977, 8/2/78) and Ridgefield Park Education Association v. Ridgefield Park Board of Education, ___ N.J. ___ (Sept. Term, 1977, 8/2/78) that the issue of teacher preparation periods is a mandatory subject of collective negotiations. This test defines mandatorily negotiable terms and conditions of employment as those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. There is no doubt in the undersigned's mind that the issue concerning an alleged reduction in the number of teacher preparation periods concerns a teacher's workload and thus clearly affects one's terms and conditions of employment. This issue was a matter for mandatory negotiations between the parties and the Newark Teachers Union is thus within its rights

to pursue the instant grievance through arbitration. [See e.g. Dunellen, supra, Englewood Bd. of Education v. Englewood Teachers' Assn, 64 N.J. 1 (1973), Byram Township Board of Education v. Byram Township Ed. Assn, 152 N.J. Super. 12 (App. Div. 1977), Red Bank Bd. of Ed. v. Warrington, et al, 138 N.J. Super. 564 (1976), and Piscataway Twp. Bd. of Ed. v. Piscataway Principals Assn., App. Div. Docket Nos. A-2613-76 and A-3621-76, (decided on November 17, 1978)]. The undersigned is satisfied after review of the pertinent judicial decisions cited above and after consideration of the Board's Scope Petition and the exhibits attached thereto that negotiated agreements providing for certain teacher preparation periods would not significantly interfere with the exercise of inherent management prerogatives.

As has been frequently indicated by the Commission and affirmed by the New Jersey Supreme Court in Ridgefield Park Board of Education, supra, scope proceedings relate solely to the negotiability of the subject matter of the parties' dispute. Whether particular subjects are within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract at issue provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other similar question relating to procedural or substantive arbitrability is not to be determined by the Commission in a scope proceeding. These are questions that are appropriate for determination by an arbitrator and/or the Courts.

The undersigned lastly wishes to note that this decision relates to the Board's request for a temporary stay of arbitration. The ultimate administrative decision on the merits of the dispute in the instant scope of negotiations proceeding still rests with the entire Commission and a determination not to stay the arbitration pending the Commission's final decision is not dispositive of the issue.

BY ORDER OF THE COMMISSION



Stephen B. Hunter
Special Assistant to the Chairman

DATED: Newark, New Jersey
November 20, 1978