

P.E.R.C. NO. 90-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FLEMINGTON-RARITAN REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-2

FLEMINGTON-RARITAN
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Flemington-Raritan Education Association against the Flemington-Raritan Regional Board of Education. The Commission finds that a grievance seeking compensation for increased workload and a declaration that an advisory committee provision was violated is mandatorily negotiable and arbitrable.

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Appearances:

For the Petitioner, James P. Granello, Esq.

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On July 11, 1989, the Flemington-Raritan Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Flemington-Raritan Education Association.

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

The Association is the majority representative of the Board's teachers. The Board and Association entered into a collective negotiations agreement effective July 1, 1987 through June 30, 1989. Its grievance procedure ends in binding arbitration. Article 7, sections B.1 and B.2 guarantee teachers a 40-minute

duty-free lunch period and daily preparation time equal to one class period. The first paragraph of section B.3 reads: "On a normal school day, all teachers shall spend the remaining school day involved in pupil contact to implement the District's educational program. The Superintendent of Schools shall determine which instructional schedule best meets the educational goals of each building."

The Board and the Hunterdon Central Regional High School District Board of Education have an agreement to share the costs of student transportation. Hunterdon owns the buses and employs the drivers and mechanics. In August 1988, Hunterdon's transportation department advised the Board that because of increased enrollment at the Board's middle school, buses picking up students after school would have to arrive in two separate "waves" for the 1988-1989 school year. Previously, all after-school buses had been boarded at the same time.

To accommodate the new bus schedule and to improve safety for children walking home, the superintendent decided to end the school day with a 15 minute homeroom period. The change did not affect the length of the teachers' work day. The purpose of the period was to have teachers supervise students who were waiting for their buses to arrive or who would be walking home. The superintendent had decided it would be safer to dismiss walkers last so that they would not be leaving the school when buses were moving.

Before making the change, the superintendent did not consult with a teacher advisory committee on scheduling established by the contract. He advised teachers and the Association leadership of the change at orientation meetings before school opened.

On October 3, 1988 the Association filed a grievance alleging that the Board violated the parties' contract by increasing pupil contact time without input from the teacher advisory committee. The grievance sought a return to the previous work schedule until the advisory committee could have input into the scheduling of the additional duty and the alleged increase in pupil contact time. The Board denied the grievance and the Association demanded arbitration. This petition ensued. The Association now seeks compensation for increased workload and a finding that the Board violated the Advisory Committee provision. It does not seek a return to the old schedule.

The Board asserts that the change is neither negotiable nor arbitrable because it did not increase teacher workload. It contends that article 7 already obligated teachers to provide individual instruction during the new homeroom period. The Board asserts that the superintendent did not consult with the teacher advisory committee because of time constraints.

The Association claims that the change increased pupil contact time by substituting supervisory duties for preparation time. It contends that in prior years the superintendent had decided, pursuant to section B.3, to have teachers use the final 15

minutes of the work day as unstructured preparation time and that any pupil contact during that time was voluntary.

At the outset of our analysis, we stress the narrow boundaries of our 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 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. [78 N.J. at 154]

Thus we do not decide the contractual merits of the Association's grievance or the Board's defenses.

We also stress the narrowness of the abstract issue before us. The Association is now seeking compensation for increased workload and a declaration that the advisory committee provision was violated.^{1/} Regardless of whether assignment to the new homeroom

^{1/} The Board notes that the initial grievance did not contain a demand for compensation. Whether the Association can raise in arbitration a mandatorily negotiable claim not raised in the initial grievance is for the arbitrator to decide. We only decide the abstract negotiability of any claims before us. See Ridgefield Pk.; City of Camden, P.E.R.C. No. 89-4, 14 NJPER 504 (¶19212 1985). The Board also notes that the Association filed its brief without an accompanying motion to accept the brief as timely filed, despite our directive to include such a motion. Because that directive was inadvertently sent to the Association's field representative rather than its counsel, we will not enforce it.

duty is mandatorily negotiable, compensation for that duty is. Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980); Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd App. Div. Dkt. No. A-2131-88T5 (10/12/89); Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd App. Div. Dkt. No. A-4545-85T7 (3/23/87), certif. den. 108 N.J. 208 (1987); see also In re Hunterdon Cty. Freeholder Bd., 116 N.J. 322 (1989). Contrast Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981)(grievance challenged student supervision assignment and did not seek compensation).^{2/}

The Association has also alleged that the Board violated a contractual obligation to receive input from the advisory committee on scheduling. That claim is legally arbitrable. Local 195, IFPTE v. State, 88 N.J. 393 (1982); Plainfield Bd. of Ed., P.E.R.C. No.

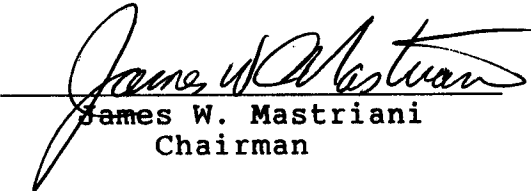
^{2/} The Board denies the Association's claim that in prior years, teacher work schedules listed the 15 minute period as preparation time. The Board is free to raise that defense on the merits before the arbitrator. The resolution of that dispute would not affect the negotiability of the compensation claim. Matawan/Aberdeen Reg. Sch. Dist. Bd. of Ed. v. Matawan Reg. Teachers Ass'n, App. Div. Dkt. No. A-6054-88T5 (1/24/90) aff'g P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989) (where scope petition pertained only to compensation question, no need for Commission to determine whether underlying schedule change was managerial prerogative). We accordingly deny the Board's request for an evidentiary hearing to resolve that dispute.

88-46, 13 NJPER 842 (¶18324 1987). The Board's assertion that the advisory committee claim is moot or has been waived is not within our scope of negotiations jurisdiction. Ridgefield Park.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Ruggiero, Johnson and Smith voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained from consideration.

DATED: Trenton, New Jersey
January 31, 1990
ISSUED: February 1, 1990