

P.E.R.C. NO. 83-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAHWAH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-112

MAHWAH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds non-negotiable contractual clauses which would require the Mahwah Board of Education to relieve teachers of certain non-teaching duties, hire substitute teachers and teacher aides, and reduce class size. The Commission holds mandatorily negotiable clauses concerning compensation for teachers covering classes for absent colleagues and the teacher's primary responsibility to teach.

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Appearances:

For the Petitioner, Sullivan & Sullivan, Esqs.
(Mark G. Sullivan, of Counsel)

For the Respondent, Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, of Counsel)

DECISION AND ORDER

On May 10, 1982, the Mahwah Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a declaration that certain provisions from the 1980-82 agreement which the Mahwah Education Association ("Association") has proposed for reinclusion in a successor contract are not mandatory subjects for negotiation.^{1/} Both parties have submitted briefs and accompanying documentation.

The initial item in dispute concerns the existing Article VII, Sections (R) and (W) relating to the elimination of non-teaching duties and the assignment of substitute teaching duties. These provisions read as follows:

^{1/} The scope petition initially raised several other proposals for consideration, but the parties have resolved these issues.

Article VII

Teacher Work Day, Work Year, And Teaching Load

* * *

(R.) The Board of Education shall relieve teachers of the following non-teaching duties: morning and afternoon bus duty, lunchroom and playground duties.

* * *

(W.) Substitutes shall be employed whenever a teacher is absent. In an emergency (when the administration has tried to employ a substitute but has been unsuccessful) a teacher may consent to cover one or more periods at the rate of ten (10) dollars per period.

Section (R) prohibits the Board from assigning specific non-teaching duties to teachers. The Board argues that the clause is non-negotiable because it infringes upon the Board's right to assign specific duties. The Association maintains that the provision concerns duty-free time and workload which are both mandatorily negotiable subjects, particularly when the change in duties results in a substitution of a duty period for a non-duty period.

It has been repeatedly held that the right to assign teachers non-teaching duties is a non-negotiable management prerogative. In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); In re Plainfield Bd. of Ed., P.E.R.C. No. 80-42, 5 NJPER 418 (¶10219 1979); Long Branch Bd. of Ed. v. Long Branch Ed. Ass'n, 150 N.J. Super. 262 (App. Div. 1977), aff'd 73 N.J. 461 (1977). This right, however, is not unlimited. Where such assignments primarily affect the working

hours, workload, or compensation of employees, the issue is mandatorily negotiable. Byram, supra; In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981); In re Wanaque Borough Reg. Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (¶10216 1979); In re City of Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd App. Div. Docket No. A-954-79, pet. for certif. den. 87 N.J. 310 (1981); In re Buena Reg. Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (¶10072 1979); In re Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979). See also, Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Newark Bd. of Ed. v. Newark Teachers Union, App. Div. Docket No. A-2060-78 (1980). Thus, for example, an employer may not assign non-teaching duties during negotiated duty-free time.

In the instant dispute, the contract provision on its face precludes, under any circumstances, the assignment of specific non-teaching duties to teachers. It does not primarily concern an increase in work hours or workload or a provision for additional compensation. Therefore, we find that section (R) is not mandatorily negotiable.

Section (W) concerns both the hiring of substitutes and the rate of compensation for teachers who cover periods for absent teachers. The decision to hire substitutes is a non-negotiable management prerogative, but the rate of compensation for unit teachers who cover class periods is mandatorily negotiable. In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No.

82-54, supra. Cf. In re Fairview Bd. of Ed., P.E.R.C. No. 80-32, 5 NJPER 400 (¶10207 1979); In re Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979). Therefore, the first sentence of section (W) and the phrase "a teacher may consent" in the second sentence are non-negotiable because they concern decisions to hire substitutes and assign teachers; the remaining portion of the provision is mandatorily negotiable as it concerns the rate of compensation.

The second disputed provision states:

Article VIII

Class Size

(A.) Any class shall be reduced when the number of pupils assigned to any class is larger than the capacity of teaching facilities or the number of adequate teaching stations available in the room.

Class size has been consistently held not to be mandatorily negotiable. See, In re New Providence Bd. of Ed., P.E.R.C. No. 83-88, 9 NJPER ____ (¶____ 1982) and cases cited therein. We so hold here.

The last disputed clause, Article IX, Section (A) provides:

Article IX

Non-Teaching Duties

(A.) The Board and Association acknowledge that a teacher's responsibility is to teach and that his/her energies should, to the extent possible, be utilized to this end. The Board and the Association recognize that teacher aides are useful and necessary to implement this principle. However, teachers may be required to perform some non-teaching duties in the conduct of school business.

The Board claims this clause requires it to hire teacher aides, a non-negotiable educational policy determination. It cites In re Hope Twp. Bd. of Ed., P.E.R.C. No. 79-85, 5 NJPER 203 (¶10116 1979).

The Association insists this provision must be read in conjunction with Article VII which delineates the teacher work day, work year and teaching load, mandatorily negotiable matters. Therefore, the Association contends that Section IX (A) concerns teacher workload. It cites Bd. of Ed. of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); Burlington County College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Bd. of Ed. v. Warrington, supra.

To the extent that the clause could be interpreted to require the Board to hire teacher aides or to refrain from assigning non-teaching duties to teachers who are on duty, we hold it is not mandatorily negotiable. See, e.g., In re North Bergen Bd. of Ed., P.E.R.C. No. 82-126, 8 NJPER 397 (¶13181 1982); In re North Bergen Bd. of Ed., P.E.R.C. No. 82-109, 8 NJPER 317 (¶13143 1982); In re Perth Amboy Bd. of Ed., P.E.R.C. No. 83-36, 8 NJPER ____ (¶_____ 1982). So long as the parties understand that the clause may not be so construed, however, it is negotiable as a general statement of purpose.

ORDER

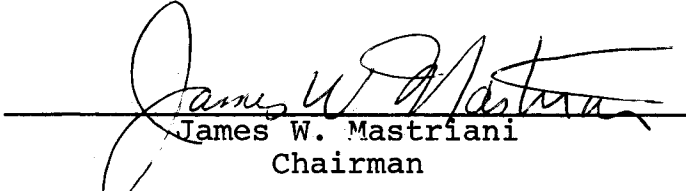
The Mahwah Education Association is prohibited from proposing Article VII, Section R, the first sentence of Article VII, Section (W) and the phrase in the second sentence stating

that "a teacher may consent", and Article VIII, Section (A) in successor contract negotiations.

The Mahwah Board of Education is ordered to negotiate with the Association over the compensation of teachers assigned to teach in place of an absent teacher when a substitute has not been obtained.

Article IX, Section (A) is negotiable, provided that it cannot be construed to require the Board to hire teacher aides or to refrain from assigning non-teaching duties to teachers who are on duty.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hartnett and Suskin voted in favor of this decision. None opposed. Commissioner Newbaker abstained. Commissioner Graves dissents from the Order to the extent that it finds certain provisions non-negotiable. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
January 19, 1983
ISSUED: January 20, 1983