P.E.R.C. NO. 97-117

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH BRUNSWICK TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-96-116

SOUTH BRUNSWICK TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the South Brunswick Township Board of Education for a restraint of binding arbitration of a grievance filed by the South Brunswick Township Education Association except to the extent the grievance concerns compensation and safety issues. The grievance alleges that the Board violated the parties' collective negotiations agreement when it regularly scheduled two of its physical education teachers to teach for more than four consecutive periods. The Commission concludes that a school board has a prerogative to determine the structure of the school day and to establish block scheduling. However, teachers have a generally negotiable interest, expressed in terms of safety and workload, in not teaching more than four consecutive periods without a break or without additional compensation. The Commission notes that should an arbitrator sustain the grievance and the Board believe that the remedy significantly interferes with its educational policy determinations, it may refile its petition.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Cassetta, Taylor, Whalen & Hybbeneth (Bruce Taylor, consultant)

For the Charging Party, Klausner & Hunter, attorneys (Stephen E. Klausner, of counsel)

DECISION AND ORDER

On April 23, 1996, the South Brunswick Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a portion of a grievance filed by the South Brunswick Township Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it regularly scheduled two of its physical education teachers to teach for more than four consecutive periods.

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

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations

agreement effective from July 1, 1994 until June 30, 1997. The grievance procedure ends in binding arbitration.

At the start of the 1995-1996 school year, the Board implemented a "block scheduling" system in the high school. As explained by the school's assistant principal, the system doubles the length of some class periods. For example, on day 1, course A meets for twice the normal time and course B does not meet. On day 2, course B has a double period and course A does not meet. Block scheduling is used so that students will meet State-mandated curriculum requirements by the time they complete 10th grade. Doing so reduces the chances that students will not graduate on time because of a failure to meet state mandates and gives students more flexibility in choosing courses during the last two years of high school.

The teaching schedule adopted by the Board to implement block scheduling paired physical education classes with science/lab courses. According to the administrator, block scheduling is particularly useful for science courses requiring labs because labs take longer and should not be cut off. Another benefit is that it reduces the time that students are in the halls between classes, cutting down on student control issues. The administrator acknowledges that this teaching schedule has required some physical education teachers to teach more than four consecutive class periods. The administrator indicated that alternatives would have meant either increasing the size of physical education classes or

giving some academic teachers more than four consecutive teaching periods. The administration deemed the present teaching schedule to be more beneficial to students than other alternatives.

In response to the new teaching schedule, the Association filed with the physical education department supervisor five grievances on behalf of physical education teachers. The grievances were processed through the negotiated grievance procedure. The Board's responses to the one grievance that is the subject of this petition assert that nothing in the contract prohibits the assignment of more than four consecutive periods of pupil contact and that teachers in other high school departments have been assigned more than four consecutive periods in prior years.

The Association demanded arbitration. The combined demand for this and another grievance identifies five contract articles as having been violated, including a safety clause, and seeks restoration of a teaching schedule that does not require any physical education teacher to teach five consecutive periods, as well as compensation for increased workload. The Board then filed this petition, seeking a restraint of arbitration only as to the claim that it could not schedule physical education teachers for five consecutive class periods. The Board does not assert that the compensation claim is not legally arbitrable.

The Board asserts that no Commission decision has ruled on the negotiability of a limit on the number of consecutive class periods that may be assigned to a teacher. It asserts that

regardless of the negotiability of that issue, under these facts a bar on scheduling a physical education teacher for more than four classes in a row would significantly interfere with its educational policy decision to implement block scheduling and to determine the schedule that would be in its students' best interests.

The Association claims that the schedule raises a safety issue for physical education teachers who must conduct gym classes for six periods in a row. It relies on cases which have recognized the mandatory negotiability of proposals or clauses addressing employee safety.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

> 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.

Thus, we do not consider the contractual merits of the grievance.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets forth the standards for determining whether a subject is mandatorily negotiable. It states:

> [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. [Id. at 404-405]

No statute or regulation is said to preempt negotiations.

Balancing the employees' interests and the educational policy concerns, we conclude that a school board has a prerogative to determine the structure of the school day and to establish block scheduling. Once these determinations are made, however, the majority representative has a right to negotiate over the work schedules and workload of individual teachers.

Although we have not addressed this particular issue, we have long held that employees can negotiate for scheduled breaks during the workday. Orange Bd. of Ed., P.E.R.C. No. 93-39, 19 NJPER 6 (¶24004 1982); Trenton Bd. of Ed., P.E.R.C. No. 88-135, 14 NJPER 452 (¶19187 1988); see also Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, 6-7 (1973); Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973). We have also held that teachers can negotiate for limits on their workload, including limits on the number of teaching periods. Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 88-15, 13 NJPER 712 (¶18265 1987); Buena Reg. School Dist., P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985); Randolph Tp.

Bd. of Ed., P.E.R.C. No. 84-17, 9 NJPER 581 (¶14242 1983); Buena Reg. School Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (¶10072 1979); In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12, 26 (App. Div. 1977).

Workload limits for teachers often have an impact on a board's scheduling flexibility. That interference, however, does not generally outweigh the teachers' interests in negotiating limits on the amount of time or the number of periods they must teach. But see Franklin Tp. Bd. of Ed, P.E.R.C. No. 96-31, 21 NJPER 395 (¶26242 1995)(in post-arbitration determination, Commission finds that concerns for student safety and discipline make contractual three-minute passing time unenforceable; extra compensation awarded by arbitrator).

In this case, the teachers have a generally negotiable interest, expressed in terms of safety and workload, in not teaching more than four consecutive periods without a break or without additional compensation.[1/] The Board has not sought a restraint of arbitration over the Association's claim that the same alleged breach of contract warrants an award of increased compensation for teachers required to teach more than four consecutive periods. Thus, the grievance may proceed to arbitration. The only remaining question, then, concerns the remedy that might be awarded if a contractual violation is found. Although the Association's

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1/ This schedule is not a temporary emergency measure as in Perth Amboy Bd. of Ed., P.E.R.C. No. 94-123, 20 NJPER 285 (¶25145 1994).

grievance, if sustained by the arbitrator, could not undo the Board's decision to have block scheduling, we decline to speculate, before arbitration, what an appropriate remedy might be should a contractual violation be found. State of New Jersey, P.E.R.C. No. 89-85, 15 NJPER 153 (¶20062 1989); Deptford Tp., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981). We specifically express no opinion on the merits of the Association's claims or the Board's contractual defense. Should the arbitrator sustain the grievance and the Board believe that the remedy significantly interferes with its educational policy determinations, it may refile its petition.

ORDER

The request of the South Brunswick Township Board of Education for a restraint of binding arbitration is granted except to the extent the grievance concerns compensation and safety issues.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: March 26, 1997
Trenton, New Jersey
ISSUED: March 26, 1997