

P.E.R.C. NO. 82-120

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-6

EAST NEWARK EDUCATION ASSOCIA-  
TION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration over the East Newark Board of Education's requirement that its nurse be on duty during the students' lunch hour, thus postponing the nurse's lunch period.

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Appearances:

For the Petitioner, Schwartz & Pisano, Esqs.  
(Nathanya G. Simon, of Counsel)

For the Respondent, Gerald Lange, Field Representative  
New Jersey Education Association

DECISION AND ORDER

On August 4, 1981, the East Newark Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board sought to restrain binding arbitration of a grievance which the East Newark Education Association ("Association")<sup>1/</sup> had filed.

The grievance alleged that the Board violated the collective negotiations agreement when it changed the school nurse's lunch hour.

The Board has filed a brief and a reply letter brief.<sup>2/</sup>

The Association has filed a letter brief. The following facts are apparent.

<sup>1/</sup> Pursuant to the recognition clause of a collective negotiations agreement, the Association represents all certified teaching personnel, including nurses, employed by the Board. The East Newark School District consists of one school which houses kindergarten through eighth grade classes.

<sup>2/</sup> The Board has also requested a hearing pursuant to N.J.A.C. 19:13-3.6. We do not believe a hearing is necessary to resolve the issue before us.

On January 14, 1981, the Association filed a grievance alleging that a change in the time of the school nurse's lunch hour violated the collective agreement.<sup>3/</sup> Apparently, while the teachers regularly had their lunch period from approximately 11:30 a.m. to 12:30 p.m., the nurse was required to have her lunch period from 12:30 p.m. to 1:30 p.m.

On January 30, 1981, the Administrative Principal of the East Newark Public School sent the president of the Association a memorandum summarizing his meeting with her over the grievance. The memorandum stated:

This memorandum will serve to summarize our meeting of January 20, 1981 concerning the time set for Mrs. Alexander's lunch hour.

It was agreed at that meeting that a further grievance could be avoided if language could be inserted in the teachers' contract stating that the school nurse would have a duty-free lunch hour from 12:30 p.m. to 1:30 p.m. each day. You made the point in conjunction with Mrs. Alexander that your concern was that if her lunch hour was changed, then the Board could arbitrarily change the hours of any teacher without the benefit of negotiations.

I pointed out that the presence of the school nurse during the childrens' lunch hour was essential to their overall welfare and safety and that this change in the time would not effect any other member of the professional staff since obviously there would not be the special need for their presence during the 11:30 a.m. to 12:30 p.m. time period. As the result of our meeting, I am recommending that the Board insert terminology in the employment contract to the effect that the nurse's duty-free lunch hour will be from 12:30 p.m. to 1:30 p.m. I believe this should be satisfactory to all parties, but I will advise you of the Boards'

<sup>3/</sup> The collective agreement does not explicitly state when the lunch period shall be. Section 14A provides: "The normal school day for teachers is from 8:30 a.m. to 11:35 a.m. and 12:35 p.m. to 3:00 p.m."

response to my suggestion as soon as it is possible for them to respond appropriately.

On April 24, 1981, the president of the Board sent the president of the Association a letter proposing that the parties' agreement be amended to specify that the nurse's normal school day would be from 8:30 a.m. to 12:35 p.m. and 1:35 p.m. to 3:00 p.m. On May 21, 1981, the Association's president rejected this proposal. She wrote: "The Association feels that the nurse's lunch hour should remain the same on Mondays and Fridays. Any changes on those days upsets the school program and also denies medical attention to the students during physical education classes."

On June 30, 1981, the Association filed a Demand for Arbitration with the American Arbitration Association. The instant petition ensued. The parties have agreed to a stay of arbitration pending the issuance of this decision.

The Board asserts that it has a managerial prerogative to determine that the nurse should take her lunch hour after the students finish their lunch hour. It asserts that "...it is more important for a nurse to be available during lunch, where a child could choke or be hurt, than during any regular classroom program." It concludes that this case involves its right to make an assignment within the negotiated hours of employment based upon pupil safety and welfare.<sup>4/</sup>

<sup>4/</sup> The Board also makes some arguments outside the proper focus of a scope of negotiations proceedings. See Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, the Board argues that the contract does not specify the hours of a school nurse, the nurse has understood since her hiring that her lunch would follow the children's lunch hour, the Board did not authorize any change in this understanding, and the Association waived its claim. We will not consider these questions.

The Association contends that the change in lunch time has resulted in an increase in work load, apparently because the nurse has to treat more injured or ill students during the students' lunch hour than she would have to treat if she took her own lunch period at that time. Further, it asserts that the change in the nurse's lunch time has resulted in her being denied any lunch period one day a week. The Board denies that the nurse has lost any lunch time.

In In re Salem City Board of Education, P.E.R.C. No. \_\_\_\_\_, 8 NJPER \_\_\_\_\_ (¶ \_\_\_\_\_ 1982), decided today, we considered an almost identical issue: is a requirement that a nurse remain in the school building during her lunch period so that the nurse can attend to emergencies arbitrable? We held that the Board had a managerial prerogative to establish such a requirement in order to protect the safety and well-being of the student body. See also In re Byram Township Bd. of Ed., 152 N.J. Super. 12, 24-25 (App. Div. 1977).

Similar considerations prevail here. The Board has determined that it wants and needs to have a nurse available to treat injured or ill students during the students' lunch hour, a time when the incidence of such injuries or illnesses is apparently higher than during classroom time. The importance of this interest in protecting the student safety and well-being outweighs the interest of the employee in this case in not having to treat an increased number of injured or ill students or not having her lunch period postponed one hour per day.<sup>5/</sup>

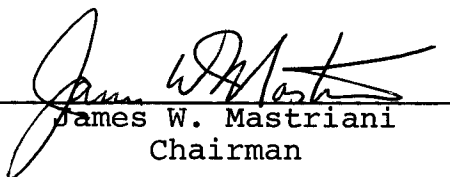
<sup>5/</sup> We note the Association's assertion that the alleged change upsets the school program and denies medical attention during

Accordingly, we will restrain arbitration over the Board's requirement that the nurse be on duty during the students' lunch period.<sup>6/</sup>

ORDER

The Commission grants the request of the East Newark Board of Education for a restraint of binding arbitration over the requirement that its nurse be on duty during the students' lunch period.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch and Suskin voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey

June 3, 1982

ISSUED: June 4, 1982

5/ (Continued)

physical education classes. It is for the Board to determine when the services of a nurse are most needed. We will not secondguess its judgment that medical coverage during the students' lunch period is essential.

6/ While we will not permit an arbitrator to displace the Board's judgment that a nurse must be on duty during the students' lunch period, we would not restrain arbitration to the extent the Association claims the nurse lost one lunch period per week and merely seeks to have that lunch period reestablished at a different time or to have the nurse compensated for the allegedly lost period.