

P.E.R.C. NO. 93-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FLORHAM PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-17

FLORHAM PARK EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains, in part, binding arbitration of a grievance filed by the Florham Park Education Association against the Florham Park Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required teachers to supervise children playing on the playground and getting on and off buses. The Commission restrains arbitration to the extent the grievance challenges the Board's right to assign teachers student supervision duties. Issues such as compensation and the frequency and rotation of assignments are severable and mandatorily negotiable.

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Appearances:

For the Petitioner, Fogarty & Hara, attorneys
(Stephen R. Fogarty, of counsel)

For the Respondent, Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On August 24, 1992, the Florham Park Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Florham Park Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it required teachers in the Ridgedale Middle School to supervise children playing on the playground and getting on and off buses.

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

The Association represents the Board's teachers and other personnel, with certain immaterial exceptions. The parties entered into a collective negotiations agreement effective for the

1989-1990, 1990-1991, and 1991-1992 school years. Article XIV is entitled Teaching Hours and Teaching Load. It provides, in part:

A. TEACHER DAY

2. The arrival and departure times for staff are as follows:

Brooklake School	8:15 a.m. and 3:15 p.m.
Briarwood School	8:15 a.m. and 3:15 p.m.
Ridgedale School	7:45 a.m. and 2:40 p.m.

* * *

The work day for teachers shall consist of seven hours per day, with the exception of the teachers at Ridgedale School who work six hours and 55 minutes because of class scheduling at that school.

B. NON-TEACHING PERIODS

1. Each teacher is entitled to a duty free lunch period of duration equal to the students' standard lunch period and is permitted to absent himself from the building during that period.

2. Each teacher is entitled to an average over the school year of one (1) preparation period of each full school day and shall be expected to use that time in educationally related matters.

The grievance procedure ends in binding arbitration.

Before January 20, 1992, teachers at the Ridgedale Middle School had 10 minutes of duty-free time in the morning and 15 minutes of duty-free time in the afternoon after students were dismissed from classes. Effective January 20, 1992, teachers were assigned on a rotational basis to supervise students as they played on the playground and got on and off buses.

On March 19, 1992, the Association filed a grievance with the principal. The grievance asked the principal to rescind immediately the morning and afternoon supervision duties. It further asserted that Ridgedale teachers had never had supervisory duties; daily pupil contact had been significantly increased; and time spent giving extra help before and after school would be decreased.

On March 27, 1992, the principal denied the grievance. He asserted that the collective negotiations agreement had not been violated since all teachers had received their duty-free lunch periods and preparation periods. He expressed his hope that teachers would schedule tutorials during the tutoring period or at another time which did not conflict with supervision duties.

The Association appealed the principal's decision. It again asked that the teachers be immediately relieved of their student supervision duties.

On May 15, 1992, the Board also denied the grievance. It asserted that the management rights clause encompassed the assignment of these duties and that the teachers received the duty-free time to which the contract entitled them.

On May 15, 1992, the Association demanded binding arbitration. It defined the nature of the dispute as "increased pupil contact time, violation of past practice." It sought a "return to the status quo or any other remedy fashioned by arbitrator." This petition ensued.

The Board contends that it has a managerial prerogative to assign certified teaching staff members to supervise playground and bus activities and that the Association has not sought any relief besides rescission of these assignments. The Association responds that the substitution of duty time for duty-free time is mandatorily negotiable; in any event, severable issues such as compensation and rotation and frequency of assignments are mandatorily negotiable; and the demand for arbitration requests any appropriate relief, not just rescission.

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 this grievance or any defenses the Board may have. Nor do we consider whether any particular request for relief is contractually arbitrable.^{1/}

^{1/} The Association has submitted an arbitration award holding that the Board violated the contract when it began the homeroom period at Brooklake School 15 minutes earlier on inclement days, but rejecting the Association's claim for retroactive remuneration. We do not consider this award.

In Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992), we reviewed the case law addressing the negotiability of non-teaching duties:

In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977), holds that teachers may negotiate over having to perform non-teaching duties. But certain non-classroom assignments relating to student safety, security and control are not mandatorily negotiable. The method of distributing these assignments and compensation for performing them are mandatorily negotiable and arbitrable issues. See 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). However, regardless of the type of duty assignment involved, reductions in preparation time and increases in workload caused by the substitution of a duty period for a preparation period are mandatorily negotiable. Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82). Thus, maintenance of contractual preparation time guarantees and workload ceilings may be enforced through grievance arbitration. See, e.g., Newark Bd. of Ed., P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), recon. den. P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80). Id. at 404.

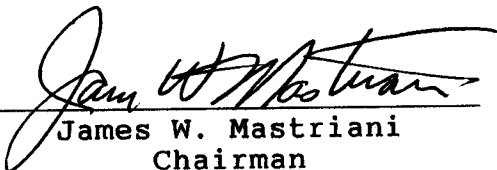
Assignments to supervise students playing on the playground and getting on and off buses relate to student safety, security, and control and are therefore not mandatorily negotiable. Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984); Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981). However, even though these student supervision assignments are not mandatorily negotiable, the Association's brief

has raised issues -- compensation and the frequency and rotation of assignments -- that are severable and mandatorily negotiable. Long Branch; Union Tp.; Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER 78 (¶17286 1986). We cannot decide whether the Association has properly presented such claims in the grievance proceedings or whether such claims have any contractual merit. We simply hold that such claims are mandatorily negotiable and may be legally resolved through binding arbitration.

ORDER

The request of the Board of Education of Florham Park for a restraint of binding arbitration is granted to the extent the grievance challenges the Board's right to assign teachers student supervision duties.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: January 28, 1993
Trenton, New Jersey
ISSUED: January 29, 1993