P.E.R.C. NO. 82-62

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
BOROUTH OF HAWTHORNE,

Petitioner,

-and- Docket No. SN-82-7

HAWTHORNE TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations decision, the Commission denies the request of the Board of Education of the Borough of Hawthorne for a permanent restraint of arbitration of a grievance filed by the Hawthorne Teachers Association. The grievance concerned the Board's decision to schedule an Algebra I course for academically qualified students prior to the start of the normal school day. The Board conferred with high school mathematics teachers who were eligible to teach such a course and selected a teacher who agreed to the assignment. While the Association does not challenge or seek to rescind the Board's establishment of such a course, it nevertheless grieves the failure of the Board to negotiate with the Association concerning the change the assignment would have on the teacher's hours of work, notwithstanding the fact that the Board, as an accommodation to the teacher selected to teach the early course, allowed her to end her work day one hour earlier than normal. The Commission, relying in part on Woodstown-Pilesgrove Reg. Schl. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n., 81 N.J. 582 (1980), and Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n. of Ed. Secys., 78 N.J. 1 (1978) finds that while the establishment of extra or co-curricular programs are non-negotiable, compensation for such assignments or alterations in working hours, even when the number of hours worked is not increased, are both mandatorily negotiable.

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Appearances:

For the Petitioner, Jeffer, Hopkinson & Vogel, Esqs.
(Reginald F. Hopkinson, of Counsel)

For the Respondent, William J. Flynn, New Jersey
Education Association

DECISION AND ORDER

On July 17, 1981, the Board of Education of the Borough of Hawthorne (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a permanent restraint of a grievance which the Hawthorne Teachers Association (the "Association") has sought to submit to binding grievance arbitration. Briefs have been filed by each party, and oral argument was held before the Commission on November 10, 1981.

The facts relating to the dispute are not complicated and essentially not in dispute. The Board contends that the instant matter primarily involves educational policy and a managerial prerogative and is neither negotiable nor arbitrable.[1/] The

1/ Alternatively, the Board contends that any affect on the terms and conditions of employment is de minimis and therefore the grievance is frivolous.

Association asserts that the matter is one which directly and intimately affects the work and welfare of employees and thus should be permitted to proceed to binding grievance arbitration.

In the Spring of 1981, the Board made a determination to schedule an Algebra I course for certain academically qualified elementary school students at the Lincoln Elementary School for the purpose of preparing such students to pursue advanced mathematics courses upon their attendance in high school. In order to accomplish this instructional objective, it was necessary that the course be taught at 7:35 a.m. at the elementary school, some 45 minutes prior to the usual reporting time at the high school. The normal work day at the high school is 8:20 a.m. to 3:11 p.m.

The Superintendent of Schools conferred with mathematics teachers at the high school who were eligible to teach such a course and selected Ms. Judith Niznik, who agreed to teach the course. As an accommodation to Ms. Niznik's willingness to teach the course and to her normal work day, the Board restructured her work day to commence at 7:35 a.m., some 45 minutes prior to her previous reporting time, and to terminate her work day at 2:11 p.m., some 60 minutes prior to her previous time of 3:11 p.m.

The Association filed a grievance alleging a violation of Article 8, Section A of the agreement, which is entitled "Teaching Hours and Teaching Load," which specifies as follows:

> 1. A teacher's workday may not normally exceed a total of 6 hours, 45 minutes, which normally will allow for signing in fifteen (15) minutes before and signing out fifteen (15) minutes after the regular daily school schedule, except on Fridays and days when school is recessed early at which time teachers may leave with pupil dismissal. In addition to this specified time, every teacher has the responsibility to fulfill the teaching role as related to (1) assisting students when they require or request help; (2) of conferring with parents about pupil progress or problems; (3) of consulting with colleagues, supervisors, or administrators on professional matters; and (4) seeking to improve professional competence, curriculum, and classroom skills. It is expected that abuse of this prerogative to extend the work day shall be avoided.
>
> 2. Whenever there is significant indication that the Superintendent of Schools has abused the prerogative of extending the school day, the Association has the privilege of grieving directly to the Board through the office of the Superintendent. The Board shall meet forthwith to act upon the grievance.

The grievance was denied at the Board level and the Association submitted a demand to arbitrate the grievance. While the Association initially grieved this matter alleging a violation of the Teaching Hours and Teaching Load provision in its demand for arbitration, the grievance was defined as a "Change in the prescribed daily teaching hours by an individual staff member through private agreement with the Superintendent." The Association seeks as its relief an order compelling negotiations relating to the action of the Board. Further, the Association states that inasmuch as the instructional program for the school year has now begun it does not seek to rescind the decision of the Board which was implemented in September of this year.

At issue herein is not whether the instant grievance is meritorious nor whether the subject matter of the grievance is contractually arbitrable under the terms of the collective agreement. The Commission's obligation herein is to determine whether the dominant issue herein constitutes a mandatorily negotiable term and condition of employment under the facts and circumstances of this particular case.[2/]

In discussing the relationship between managerial prerogatives and terms and conditions of employment, the New Jersey Supreme Court in Woodstown-Pilesgrove, supra noted:

> Logically pursued, these general principles--managerial prerogatives and terms and conditions of employment--lead to inevitable conflict. Almost every decision of the public employer concerning its employees impacts upon or affects terms and conditions of employment to some extent. While most decisions made by a public employer involve some managerial function, ending the inquiry at that point would all but eliminate the legislated authority of the union representative to negotiate with respect to "terms and conditions of employment." N.J.S.A. 34:13A-5.3. Conversely to permit negotiations and bargaining whenever a term and condition is implicated would emasculate managerial prerogatives.
> 81 N.J. at 589.

The Court goes on to note that in attempting to reconcile the two conflicting principles one should not focus exclusively upon the impact or effect of a managerial decision [Id. at 589-590], rather it is:

> [t]he nature of the terms and conditions of employment [that] must be considered in relation to the extent of their interference with managerial prerogatives. A weighing or

2/ Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980).

balancing must be made. When the dominant issue is an educational goal, there is no obligation to negotiate and subject the matter, including its impact, to binding arbitration. Thus, these matters may not be included in the negotiations and in the binding arbitration process even though they may affect or impact upon the employee's terms and conditions of employment.

It is apparent that in the limited factual context of this dispute, the individual schedule of Ms. Niznik has been altered to accommodate a specialized program of instruction resulting in a decrease in her overall work day. The Association acknowledges that the Board's action was precipitated by a genuine desire to improve its instructional program. The Association does not challenge, nor could it in our view, the Board's right to set up the extra class before school hours and to designate (irrespective of whether the teacher volunteered or was directed to teach the class) an instructor for the class.

The grievance challenges the Board's action of unilaterally determining through private consultation with the affected teacher, the form of accommodation to be made for the additional work of teaching a class before school hours. In this case, the accommodation took the form of released time, i.e., allowing the teacher to end her work day an hour before the normal quitting time.

At oral argument the attorney for the Board conceded that if the accommodation had been additional compensation, the Board's position might be different and might be arbitrable. We find no distinction between the accommodation made and the alternative of compensation. The question is whether a

Board is free to change a teacher's terms and conditions of employment as an accommodation for accepting some extra-curricular or other duty outside the normal workday. Whether the accommodation is an additional stipend or permission to leave work earlier than other teachers, it still takes the form of a "compensation" for additional duties performed. The question of whether the Board was justisfied in bypassing the Association in deciding with the teacher what the form of that compensation would be is the thrust of this grievance.[3/]

Negotiations concerning an appropriate alternation in the teacher's terms and conditions of employment could have been accomplished without any interference with the Board's right to establish the class, the class time and the instructor for te course. Recent decisions of the Supreme Court and the Appellate Division support this view.

In Woodstown-Pilesgrove, supra, the Supreme Court found that compensating teachers for two additional hours of work performed on the day before Thanksgiving, did not interfere with the Board's right to extend the school day on that date. Similarly, it has been held that while the establishment of extra or co-curricular programs are non-negotiable, compensation for such assignments is a mandatorily negotiable term and condition

3/ Whether the contract provides a defense for the Board's action is a possible defense for the arbitration.

of employment.[4/]

The foregoing discussion should not be taken as an indication that the Board's actions in this case were violative of any provision in the contract, nor that the accommodation which the Board provided the affected teacher was unreasonable. Where, as here, a mandatorily negotiable term and condition of employment is involved, the issue as to whether the Board may exclude the majority representative from discussions concerning any employee's working conditions is mandatorily negotiable and therefore arbitrable. The Supreme Court has held that alterations in working hours, even where the number of hours is not increased, is mandatorily negotiable. See, Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n of Ed. Secys., 78 N.J. 1 (1978). Timely discussions between public employers and the representative of their employees is the method mandated by the Act to resolve disputes, be they major or minor in scope, concerning employee working conditions. Use of the proper channels fosters labor peace and stability and can forestall more serious strife, the avoidance of which is the goal of our Act. N.J.S.A. 34:13A-2.

It is left to our speculation as to whether an Association grievance would have been filed had some measure of communication been offered to the Association concerning the Board's effort to effectuate an improvement in the educational program of the district. Such communication would be consistent with the

4/ Ramapo-Indian Hills Ed Ass'n v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (1980).

admonition of the Supreme Court as set forth even prior to the 1974 amendments to this Act that even on matters of educational policy which may not be mandatorily negotiable, an employer would be well advised to voluntarily discuss such policies in a timely fashion with representatives of its employer.[5/] The Court went on to note:

> Peaceful relations between the school administration and its teachers is an ever present goal and though the teachers may not be permitted to take over the educational policies entrusted by the statutes to the Board they, as trained professionals, may have much to contribute towards the Board's adoption of sound and suitable educational policies. Dunellen, supra, 64 N.J. at 31.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the request for a permanent restraint of arbitration in this matter is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcells, Graves and Suskin voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed.

DATED: Trenton, New Jersey
December 15, 1981
ISSUED: December 17, 1981

5/ Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17, 31 (1973).