P.E.R.C. NO. 85-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINCOLN PARK BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-85-5

LINCOLN PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Lincoln Park Board of Education to restrain binding arbitration of a grievance that the Lincoln Park Education Association filed against the Board. The grievance alleged that the Board violated the parties' collective negotiations agreement when, without compensation, it substituted ten minutes of bus duty for preparation time.

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Appearances:
For the Petitioner, Hoffmann & Fiorello, Esqs.
(Walter F. Hoffmann, On the Brief)

For the Respondent, Bucceri & Pincus, Esqs.
(Gregory T. Syrek, Of Counsel and On the Brief)

DECISION AND ORDER

On July 30, 1984, the Lincoln Park Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a grievance that the Lincoln Park Education Association ("Association") filed against it. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it assigned its middle school teachers, on a rotational basis and without additional compensation, to bus duty between 8:25 to 8:35 a.m. each morning.

The parties have filed briefs and documents. The following facts appear.[1/]

The Association is the majority representative of the Board's teachers, custodial employees, cafeteria workers,

1/ The Board has requested oral argument. We deny this request.

secretaries, clerks, and other employees. The Board and the Association entered into a collective negotiations agreement effective September 1, 1983 through August 31, 1985. That agreement contains a grievance procedure ending in binding arbitration.

Article V, Section C(2) of the contract provides:

> The normal in-school work day for seventh and eighth grade teachers (7-8) shall begin no later than ten (10) minutes before the start of the school day, shall end no sooner than fifteen (15) minutes after the end of the school day, and shall include a duty-free lunch period of at least thirty (30) minutes. Total in-school work day shall consist of not more than seven hours (7 hrs).

Under this provision, the work day for middle school teachers, starts at 8:20 a.m. and ends at 3:15 p.m.

Before the 1983-85 contract was executed, teachers at two elementary schools (Pine Brook and Patania) had morning bus duty, on a rotational basis, from 8:25 to 8:35 a.m. each morning. Teachers at the middle school (Chapel Hill) did not have this duty. Further, middle school teachers were not required to supervise or teach students during this ten minute period. Instead, according to two teachers' certifications, they could use the period as either preparation or free time -- for example, preparing bulletin boards, dittos and books for class or, alternatively, going to the teachers' room for a cup of coffee.[2/]

The middle school principal supervised students from 8:25 to 8:35 a.m., outside if the weather was good and in the auditorium if the weather was bad. Students then went to their

2/ According to a supplemental certification filed by the superintendent, teachers were required to report to their work stations to prepare for class.

assigned classes at 8:35 a.m.

On January 23, 1984, the Board assigned middle school teachers, on a rotational basis, to bus duty and pupil supervision from 8:25 to 8:35 a.m. No additional compensation was provided or discussed with the Association. According to the superintendent's supplemental certification, this assignment was made because, a few years back, one student had been injured arriving at school before classes and the student had sued; the Board therefore negotiated an agreement to compensate volunteering teachers at all schools for coverage before 8:25 a.m. and assigned Chapel Hill teachers to bus duty between 8:25 and 8:35 a.m. as it had previously done at its other schools.

The Association filed a grievance. The grievance stated:

> Morning bus duty, in addition to the duty as outlined in Article V C(3) of the 1983-85 agreement between the Lincoln Park Education Association and the Lincoln Park Board of Education, has been assigned to teachers at Chapel Hill School effective 1/23/84. Such duty has not existed at Chapel Hill School for a period in excess of ten (10) years. Such duty has widened the scope of a teacher's in-school work day at Chapel Hill School. It is the feeling that this duty is a definite change of previously existing working conditions. Teachers at Chapel Hill School are further aggrieved because no prior written notice was ever given by the Board as to its intent to initiate such duty. Furthermore, there is no language in the negotiated agreement ratified 12/83 that modifies the status quo within the normal in-school work day.

It sought the following relief:

> Consistency with the Pinebrook and Patania Schools in terms of the length of the school day. It is recommended that the length of the school day be 6 hrs. and 45 min. for all three schools.

> Morning coverage, as outlined in Article V C-3, be from 8:20 a.m. to 8:35 a.m. for teacher volunteers at Chapel Hill School.
>
> Maintain the status quo (as existed on the day of ratification) for all teachers at Chapel Hill.

On January 26, 1984, the superintendent denied this grievance. He contended that the Board had a contractual right under Article 5, Section C(3) [3/] and a managerial prerogative to assign additional bus duty.

The Association appealed to the Board, and the Board affirmed the grievance's denial. It asserted that the parties'

3/ This subsection provides:

> "Effective the 1983-84 school year, a 15-minute morning coverage will be provided by volunteer teachers, two (2) at Chapel Hill, two (2) at Pinebrook, three (3) at Rose M. Patania. Such coverage will commence 15 minutes prior to the start of the normal in-school teacher work day.
>
> Each volunteer shall receive a stipend of $1,000.00 (one thousand) per year (pro-rated the 1983-84 school year), and shall be responsible for providing an alternate in the event of absence.
>
> In the event of a long-term absence by a volunteer (ten or more consecutive days) the stipend will be deducted at the rate of 1/200th for each day of absence, starting with the eleventh day.
>
> The posts shall be as presently assigned at Pinebrook and Patania, and applicable to Chapel Hill in the same manner.
>
> The Board will make an effort to discourage students from arriving prior to morning coverage.
>
> Students will be instructed that upon arrival they will be expected to gather within a predesignated area within easy access and hearing of the teacher. In the event of unruly behavior, the teacher shall have the right to position students in the best interest of safety and order.
>
> In the absence of seven volunteers from the teaching staff, the Administration shall have the right to assign teachers to fill any vacant morning post at the same stipend as stipulated above."

It appears that volunteer teachers at the elementary schools and middle school provided coverage from 8:10-8:25 a.m. each day.

contract conferred a right upon it to assign Chapel Hill teachers to bus duty as it did Pinebrook and Patania teachers. The Board further asserted that it had a managerial prerogative to assign bus duty to middle school teachers and that any change in the teachers' working conditions was insignificant.[4/]

On April 3, 1984, the Association demanded binding arbitration. The demand alleged that the Board had violated Article V, Section C(3) by imposing an additional ten minute duty for Middle School teachers and sought the removal of this additional duty; pro-rated payment for time spent on this duty, and an equitable length for the school day.

On April 5, 1984, the Board notified the Association that it was willing to submit the question of contractual interpretation to arbitration, but it would not submit the questions of management rights and insignificant impact to binding arbitration since they were allegedly not contractually arbitrable. The instant petition ensued.[5/]

The Board contends that it has a contractual right to assign bus duty from 8:25 to 8:35 a.m.; that the contractual grievance procedure precludes binding arbitration concerning administrative decisions; that regardless of whether an alleged workload increase is mandatorily negotiable, this dispute is not arbitrable because it involves a substitution of one duty for

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4/ With respect to the last contention, the superintendent's supplemental certification, dated September 11, 1984, asserts there are 19 Chapel Hill teachers and that 11 teachers have 20 ten minute assignments and eight teachers have 19 such assignments during the year.

5/ The Board requested interim relief restraining arbitration pending this determination. Since the scheduled arbitration was postponed, it was not necessary to consider this request.

another; and that any workload increase is too insignificant to warrant arbitration.

The Association contends that the alleged increase in workload and pupil contact time for Chapel Hill teachers is mandatorily negotiable; that compensation for the alleged increase in workload and pupil contact time is mandatorily negotiable; and that this increase is not de minimis.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Thus, in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), stated:

> 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.

In the instant case, therefore, we do not consider the Board's contentions that it had a contractual right to assign bus duty and that the dispute is not contractually arbitrable. Instead, we focus solely on the abstract negotiability of the Board's requiring Chapel Hill teachers, without any additional compensation, to supervise pupils from 8:25 to 8:35 a.m. instead of

having preparation time or free time.[6/]

It has been well-established and consistently repeated for over a decade that an increase in teacher workload and pupil contact time is mandatorily negotiable. See Burlington County College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Maywood Bd. of Ed. v. Maywood Ed. Assn., 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (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. A-954-79 (1980), pet. for certif. den. 87 N.J. 310 (1981) ("Bayonne"); In re Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/20/80) ("Newark"); In re 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); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (¶10216 1979) ("Wanaque I"); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981) ("Wanaque II"); In re Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982) ("Wharton"); In re East Newark Bd. of Ed., P.E.R.C. No. 83-123, 8 NJPER 373 (¶13171 1982) ("East Newark"); In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C.

6/ We note a discrepancy in the certifications concerning whether the teachers could use the ten minute period for relaxation instead of class preparation. The teachers say yes, the superintendent says no. In light of the following analysis and result, it is unnecessary to resolve this dispute.

No. 83-102, 9 NJPER 104 (¶14057 1982) ("Bridgewater-Raritan"). In the instant case, it appears, based on the factual certifications, that the Board has substituted a pupil supervision period for a preparation period and has not compensated teachers for this additional pupil contact time. Under the cases we have cited and myriad others, there can be no doubt that this uncompensated increase in pupil contact time presents a mandatorily negotiable issue.[7/]

In its reply brief, the Board does not contest the Association's assertion that the uncompensated increase in pupil contact time concerned a mandatorily negotiable subject.[8/] Instead, it attempts to draw a distinction between the abstract negotiability of this dispute and its arbitrability. It has been repeatedly held, however, that disputes involving alleged increases in workload and pupil contact time may be submitted to binding arbitration. See Newark; Bridgewater; Wharton; Bayonne; Wanaque I and II; and East Newark.

7/ This is not a case like Wanaque II and In re Fair Lawn Bd. of Ed., P.E.R.C. No. 83-48, 8 NJPER 609 (¶13289 1982), where one pupil supervision period was substituted for another. Under the factual certifications, it is undisputed that the principal, not teachers, supervised Chapel Hill students between 8:25 and 8:35 a.m. We also note that school boards have a managerial prerogative to make extracurricular assignments (a right not asserted here), but boards must negotiate over appropriate compensation for such assignments. Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980).

8/ The Board indeed claims that it did negotiate over this mandatorily negotiable issue and reached agreement that Chapel Hill teachers, like teachers at other schools, would have bus duty from 8:25 to 8:35 a.m. Whether such an agreement was reached, however, is for an arbitrator. We also will not speculate about what remedy would be appropriate if the arbitrator found a contractual violation.

We further disagree with the Board's assertion that this dispute, although mandatorily negotiable and arbitrable in the abstract, should not be arbitrated because the increase in pupil contact time is allegedly insignificant. The policy of the New Jersey Employer-Employee Relations Act favors arbitration as a voluntarily agreed-upon mechanism for resolving employee grievances quickly and efficiently rather than having these grievances fester and disrupt the workplace. Here the Board and the Association have agreed upon binding arbitration as the mechanism for resolving disputes arising under contractual provisions such as those governing work day and bus duty.[9/] We believe that the legislative policy favoring the voluntary adoption of arbitration as a means to resolve mandatorily negotiable and arbitrable disputes should not be easily displaced. When, as here, a permanent change is made in the workloads and pupil contact time of all teachers leading to recurring and uncompensated additional duties, we cannot say that the dispute is too insignificant to be submitted to the legislatively-favored and voluntarily-negotiated forum of binding arbitration. See Bridgewater-Raritan; In re Hope Twp. Bd. of Ed., P.E.R.C. NO. 83-126, 9 NJPER 217

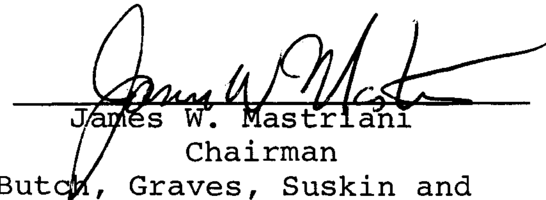
9/ We are not prejudging the Board's argument that this specific grievance is not contractually arbitrable. That question is for an arbitrator or court to decide. We merely note that the Board has, in general, agreed to binding arbitration for the resolution of contractual disputes.

(¶14102 1983); In re Perth Amboy Bd. of Ed., P.E.R.C. No. 83-63, 9 NJPER 16, 9 NJPER 16 (¶14007 1982).[10/]

ORDER

The request of the Lincoln Park Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin and Wenzler voted in favor of this decision. Commissioners Hipp and Newbaker abstained. None opposed.

DATED: Trenton, New Jersey
November 1, 1984
ISSUED: November 2, 1984

10/ The Board's reliance on In re Pompton Lakes Bd. of Ed., P.E.R.C. No. 82-84, 8 NJPER 220 (¶13087 1982) and In re Cinnaminson Twp. Bd. of Ed., P.E.R.C. No. 82-84, 8 NJPER 220 (¶13089 1982), is misplaced because these cases, unlike this one, involved changes of limited duration and occurrence, the changes did not affect the teachers' daily and weekly schedules, and the changes predominantly involved educational goals. Caldwell-West Caldwell Ed. Assn. v. Caldwell-West Caldwell Bd. of Ed., 180 N.J. Super. 440, 7 NJPER 12211 (App. Div. 1981) is distinguishable because the assignment there was consistent with the common practice affecting all teachers at the school in question, did not involve a shift from duty-free time to pupil contact time, and ineluctably followed the fundamental educational policy decision to eliminate a foreign language program. Further, that case did not consider the abstract arbitrability of the dispute and in fact the matter was submitted to arbitration without protest. Instead, the Commission merely found, and the Court agreed, that the Board did not have to negotiate before changing the teaching schedules consistent with the common practice in that school.