

P.E.R.C. NO. 81-109

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF  
THE BOROUGH OF SPOTSWOOD,

Petitioner,

-and-

Docket No. SN-81-47

SPOTSWOOD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a Scope of Negotiations proceeding, the Commission determines the negotiability and arbitrability of a grievance filed by the Spotswood Education Association which challenges the right of the Spotswood Board of Education to assign teachers to cafeteria supervision. The Association's grievance also seeks compensation for teachers required to perform cafeteria supervision duty.

Finding that the grievance does not allege that the performance of cafeteria supervision duty deprived the teachers of duty-free time, the Commission holds in accordance with prior Commission and Court decisions that such duties relate to student safety and well-being and the assignment thereof is not mandatorily negotiable or arbitrable. The Association's claim for compensation, it is determined, relates to a mandatorily negotiable subject and this aspect of the grievance may be submitted to binding arbitration.

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Appearances:

For the Petitioner, Golden, Shore, Zahn & Richmond  
(John B. Wolf, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld  
(Nancy Iris Oxfeld, of Counsel)

DECISION AND ORDER

On December 16, 1980 the Spotswood Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Spotswood Education Association (the "Association") are within the scope of collective negotiations. Briefs were submitted by both parties, and a reply brief was filed by the Board on February 1, 1981.

The dispute herein centers around the negotiability/arbitrability of a grievance filed by the Association challenging the Board's assignment of certain teachers to cafeteria supervision. The Association's grievance alleged a violation by the Board of "provisions of the [parties' collective agreement] including but not limited to Article XX, Section 1...." This provision of the parties' agreement states:

Non-teaching duties as related to Lunchroom and Playground Chaperones shall be stipulated in written Board policy.

The Board's policy, which was attached to the letter brief filed by the Association, provides that the Board will appoint persons to such duty in order that teachers may be relieved from non-instructional supervision of students.

The grievance filed by the Association seeks "Immediate return to the provisions of the contract" and "payment for time spent on cafeteria duty," as well as a demand that relief apply to all affected teachers.

On November 18, 1980, the parties, in following the grievance procedures outlined in their collective agreement, appeared before an arbitrator chosen to hear the dispute. At the arbitration proceeding, the Board, as it noted in its brief, refused to arbitrate the grievance as framed by the Association alleging that the Association sought to arbitrate only the instant teacher assignments, which the Board maintains was a managerial decision that was neither grievable nor arbitrable. The Board thereupon filed the instant Petition for Scope of Negotiations Determination.

In its submissions the Board states that the issue framed by the Association seeks to challenge the Board's assignment of teachers to cafeteria supervision duty and that this

issue is a non-negotiable and non-arbitrable managerial prerogative. The Board cites a line of Commission and Judicial decisions holding that the assignment of teachers to cafeteria, and other similar student supervision duty involves the exercise of educational policy considerations related to student safety and well-being. See, e.g. In re Plainfield Bd. of Ed., P.E.R.C. No. 80-42, 5 NJPER 418 (¶10219 1979) and In re Byram Tp. Bd. of Ed., 152 N.J. Super 12, 24-25 (App. Div. 1978).

However, there is also a line of cases which stands for the proposition that a change in the duties of a teacher is negotiable and arbitrable where it involves the substitution of a duty period for a non-duty period and thus results in an increase in teacher workload. See, e.g. Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976), Newark Bd. of Ed. v. Newark Teachers' Union, App. Div. No. A-2060-78 (1980) and Cf. Byram, supra, 152 N.J. Super at 26.

In its briefs and its responses to the Association's grievance at the preliminary stages of the grievance procedure, the Board steadfastly maintains that its action did not violate the contractual entitlement of teachers to enjoy a duty-free lunch period (Article XXIV(C)(1)).

The Association in its submissions herein has not contradicted this assertion. The initial grievance cites only the provision of the contract which refers to Board policy on cafeteria and playground chaperones and does not allege a violation of any duty-free contractual article.

Hence we find that this dispute does not involve a change in the workload of teachers as was the case in Red Bank

and Newark, both supra., and that it is appropriate to apply the line of cases cited by the Board to the Association's challenge to the assignment of teachers to cafeteria supervision. A dispute arising in a similar context was involved in Long Branch Ed. Ass'n. v. Long Branch Bd. of Ed., 150 N.J. Super. 262 (App. Div. 1976), affirmed 73 N.J. 461 (1977), where the Appellate Division, after citing Red Bank v. Warrington, supra, held:

that the decision of the local board to assign teachers to lunchroom supervision was a matter of educational policy. We further find there is substantial evidence in the record to support the conclusion of the Commissioner that the assignment of teachers to such duty was a change of form only and did not constitute the addition of an additional workload. 150 N.J. Super. at 264

Accordingly, we agree that the Association may not challenge the assignment of teacher's to lunchroom supervision before the arbitrator.

In view of the above discussion, we hold that the first part of the grievance relates to a non-negotiable managerial prerogative and may not be submitted to arbitration. However, we do not believe that the portion of the Association's grievance which includes a demand for compensation as a result of having to perform the new duty involves a managerial prerogative. Hence, it is a severable issue from the issue of assignment.

In Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980), the Court found non-negotiable the Association's attempt to arbitrate the Board's creation of a new music teacher position which included duties

formerly performed as an extracurricular assignment (band director). However, the Court held that the grievance concerning the issue of additional compensation for the new position was negotiable and arbitrable. 176 N.J. Super. at 48. See also, Mainland Reg. Teachers Ass'n v. Mainland Reg. Bd. of Ed., App. Div. Docket No. A-4566-78 (11/20/80), where the Court, in holding that a grievance concerning the assignment of teachers to be advisors to student activities was non-arbitrable, noted that the parties had negotiated concerning compensation for the assignments and had incorporated the agreements into their master contract. Accordingly, in the instant case, the portion of the grievance which seeks additional compensation under the contract as a result of the performance of cafeteria supervision may be submitted to arbitration.

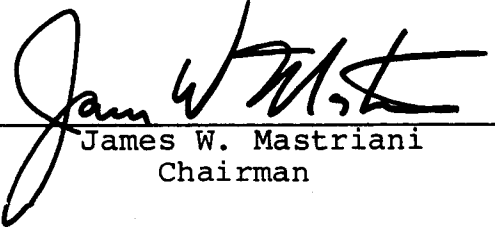
ORDER

The Board's request for a permanent restraint of arbitration is granted with respect to that portion of the grievance which seeks a return to Article XX, Section I of the parties' agreement and Board of Education Policy GDBAB, dated October 31, 1973 which is referred to therein.

The Board's request to restrain those portions of the grievance which seek compensation for teachers required to perform cafeteria supervision and that any relief apply to all

affected teachers is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani and Commissioners Hartnett and Parcells voted in favor of the entire decision. Commissioner Graves voted for that portion of the order denying the request for the restraint of arbitration and dissented from that portion which granted the request for the restraint of arbitration of the assignment of cafeteria supervision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
March 10, 1981  
ISSUED: March 11, 1981