

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGENFIELD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-20

BERGENFIELD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Bergenfield Board of Education for a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance contests the assignment of teachers to lawn duty in the morning before the school building is open and in the afternoon after students are dismissed. Arbitration is restrained only to the extent the grievance challenges the Board's right to assign teachers to lawn duty. The Commission does not bar arbitration of any issues concerning release time, workload, and methods of selecting qualified staff to perform the duty.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 99-100

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Appearances:

For the Petitioner, Wilentz, Goldman & Spitzer, P.C.,  
attorneys (Gordon J. Golum, of counsel; O. Glen  
Pottinger, on the brief)

For the Respondent, Springstead & Maurice, attorneys  
(Alfred F. Maurice, on the brief)

DECISION

On October 6, 1998, the Bergenfield Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance contests the assignment of teachers to lawn duty in the morning before the school building is open and in the afternoon after students are dismissed.

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

The Association represents custodians, secretaries, bus drivers, classroom aides and all certified teaching personnel.

The parties' collective negotiations agreement is effective from July 1, 1994 through June 30, 1997. The grievance procedure ends in binding arbitration.

Article 6 is entitled "Teachers Hours." It provides, in part:

- A. The normal in-school workday shall consist of not more than 6 1/2 hours which shall include a duty-free lunch period. This does not include additional requirement as defined in (B) below.
- B. Teachers will be required to report for duty fifteen (15) minutes before the opening of the pupils' school day and shall be permitted to leave at an average of thirty (30) minutes after the close of the pupils' school day. Effective September, 1996, Kindergarten through grade 5 teachers shall be permitted to leave an average of twenty (20) minutes after the close of the pupils' day. Special rules as to hours may be authorized by the Superintendent of Schools for particular grades and subject matter teachers in consideration of special needs; any hours in excess of above hours shall be with consultation with the President of the Association or his/her designee.

\* \* \*

- E.1. The normal workday of all 7-12 classroom teachers will consist of the following: 5 teaching periods, 1 operation period, 2 preparation periods, 1 homeroom assignment and 1 lunch period. Effective September, 1996 the normal workday of all 6-12 classroom teachers will consist of the following: 5 teaching periods, 1 operation period, 2 preparation periods, 1 homeroom assignment and 1 lunch period. Reductions in the number of teaching periods and reduction of the student load may be at the discretion of the Superintendent of Schools. Effective September, 1996, the Board has the right to require that all

sixth through twelfth grade teachers teach five classes per day.

2. Effective September, 1996 grades 6-12 will follow the same bell schedule with a 6 day rotational cycle. Team meetings for grades 6-8 will take place during operation periods on an alternating day basis. Teachers performing team meetings during the 1994-1995 and 1995-1996 school years shall be compensated at a rate of \$12.00 per period.

\* \* \*

4. In an emergency situation a teacher may be assigned an additional teaching period. If this occurs the teacher involved will be relieved of the one (1) operation period and the one (1) homeroom assignment. If a teacher is assigned an additional period he/she may opt for 1/6 of their base salary, in lieu of one (1) preparation period.

\* \* \*

On January 8, 1998, George Lutz, a teacher at the Roy W. Brown Middle School and Association president, wrote a letter to the middle school principal claiming an "inequitable application of the terms and conditions of the contract." The letter asserted that middle school staff members have been assigned "lawn duty" before and after the contractual staff hours and that the assistant principal had told Lutz that lawn duty is a voluntary arrangement. He requested that the involuntary duty cease.

On January 9, 1998, the principal wrote to Lutz and advised him that no middle school staff members had been assigned any duty exceeding their contractual hours; lawn duty has been part of the normal workday at the middle school for over 38 years;

and teachers' work schedules are adjusted on days when lawn duty is assigned.

On July 20, 1998, the Association demanded arbitration. The demand listed the grievance to be arbitrated as "improper assignment to lawn duty at Roy Brown Middle School."

Following a September 8, 1998 faculty conference, the Middle School principal sent a memorandum to all faculty. That memorandum stated:

As per our faculty conference on 9/8/98 this is to clarify that outside lawn duty is not a volunteer assignment. It is an administrative assignment to supervise and ensure the safety of our students.

As stated in our school manual section IV, Teacher Responsibilities B.1. Operations - "Staff will be assigned non-teaching duties that the administration believes are necessary for the safe and efficient operation of the school. This includes operations during the school day as well as responsibilities before and/or after school. Every effort will be made to assign these responsibilities in an equitable and fair manner."

All faculty assigned AM duty 7:50 A.M.-8:00 A.M. are permitted to leave 10 minutes earlier at the end of the day.  
All faculty that are assigned P.M. duty 2:30-2:40 P.M. are permitted to report to school 10 minutes later each day.  
In addition all teachers that have AM duty have no PM official homeroom and all teachers that have PM duty have no AM official homeroom.

The Board has submitted a certification of its assistant principal Robert Kraus. Kraus asserts that middle school teachers are assigned outside lawn duty as part of their daily teaching schedules based on whether they have an available first or ninth

period (the last period in the day). Teachers who do not have a ninth period class are assigned morning lawn duty and teachers who do have a first period free class are assigned afternoon lawn duty. Teachers who supervise students in the morning are permitted to leave 10 minutes earlier at the end of the school day and thus work from 7:50 a.m. to 2:20 p.m. Teachers assigned afternoon lawn duty supervision are permitted to report to school 10 minutes later each day and thus work from 8:10 a.m. to 2:40 p.m. Teachers who are assigned lawn duty in the morning have no afternoon homeroom. Teachers assigned lawn duty in the afternoon have no morning homeroom. The assistant principal further certifies that teachers assigned lawn duty have no increase in their contractual number of hours and no workload increase and that the assignment of lawn duty is for the safe and efficient operation of the middle school. Middle school students, unlike the high school students, have no safe place to congregate outside the school.

The Association has submitted a certification from Lutz. He asserts that a review of staff assignments reveals that in many instances the lawn duty assignment is in addition to the maximum number of assignments under the parties' agreement and that he was led to believe that lawn duty was voluntary. The Association does not dispute the Board's assignment of lawn duty as long as an assignment does not exceed the maximum daily assignments. Lutz rejects the Board's past practice argument since the teachers'

workday was amended in the last contract. Lutz asserts that an arbitrator must review the 1998-1999 Operations, Lawn Supervision and Team Meeting Schedule to determine whether assignments exceed contractual maximums.

The Association asserts that there is a factual dispute over whether certificated teaching staff can be required to perform lawn duty beyond the workload limits set by the contract. The Board asserts that the assignment of teachers to supervise students before and after school relates to its prerogative to ensure student safety, security and control.

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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item

intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

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]



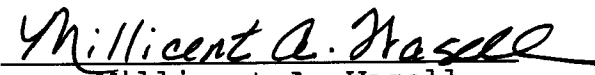
A school board has a managerial prerogative to assign teachers to supervise students before and after school to ensure student safety, security, and control. Perth Amboy Bd. of Ed., P.E.R.C. No. 98-137, 24 NJPER 271 (¶29129 1998); Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); 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). We therefore restrain arbitration to the extent, if any, the grievance contests that managerial right.

We will not bar arbitration of any issues concerning release time, workload, and methods of selecting qualified staff to perform the duty. How this non-teaching duty is assigned is mandatorily negotiable and disputes over the allocation of the duty are legally arbitrable.

ORDER

The request of the Bergenfield Board of Education for a restraint of arbitration is granted to the extent, if any, the grievance challenges the Board's right to assign teachers lawn duty. The request is otherwise denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. Commissioner Boose abstained from consideration.

DATED: May 27, 1999  
Trenton, New Jersey  
ISSUED: May 28, 1999