

P.E.R.C. NO. 84-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-98

FREEHOLD REGIONAL HIGH SCHOOL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that the Freehold Regional High School District Board of Education had a managerial prerogative to schedule an additional set of parent/teacher conferences necessary to accomplish its educational goals. It declares an arbitration award to be outside the scope of negotiations to the extent it held the Board could not legally schedule a third set of parent/teacher conferences. The Commission also holds, however, that a board of education may not unilaterally increase the overall amount of time spent within the work day either teaching or attending parent/teacher conferences without triggering its obligation to negotiate over compensation for additional time worked.

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Appearances:

For the Petitioner, Kenney & McManus, Esqs.
(Malachi J. Kenney, of Counsel and on the Brief)

For the Respondent, Katzenbach, Gildea & Rudner, Esqs.
(Arnold M. Mellk, of Counsel, Ezra D. Rosenberg, on
the Brief)

DECISION AND ORDER

On April 4, 1983, the Freehold Regional High School District Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a declaration that a binding arbitration award sustaining a grievance which the Freehold Regional High School Education Association ("Association") filed was outside the scope of negotiations. The arbitrator found that the Board's scheduling of an additional day of parent/teacher conferences in addition to a contractually-imposed limit of two such conference days violated the contract. The arbitrator, however, ordered no affirmative relief.

The parties have filed briefs, reply briefs, and documents. The following facts appear.

The Association is the majority representative of the Board's nonsupervisory teaching staff members, attendance officers, secretaries, and clerks. The Board and the Association have entered a contract which contains a grievance procedure culminating in binding arbitration. Article VIII A(4) provides:

Two (2) parent-teacher conferences may be held during the course of the school year for the purpose of discussing individual pupil progress. The dates and structure of said conferences shall be established prior to the beginning of each school year by the Superintendent in consultation with the Association. On days when parent-teacher conferences are held, half-day sessions shall be scheduled for both students and teaching staff.

Prior to the start of the 1981-82 school year, the Board scheduled two parent/teacher conference evenings -- October 29, 1981 and March 29, 1982 -- at each of its five high schools. On September 22, 1981, the Board, through the superintendent's administrative advisory council, decided to schedule a third day of conferences for the afternoon of October 28, 1981 at its Manalapan High School.

On October 28, 1981, the additional conferences were held. The regular school day was reduced to a half day and students were dismissed at 12:40 p.m. All regular periods (including classes and preparation periods) were cut from 45-50 minutes to 25 minutes. After the students were dismissed, there was a pause of between 25-50 minutes before the parent-teacher conferences started. The end of the conferences

apparently coincided with the end of the teachers' regular work day.^{1/}

On October 1, 1981, the Association filed a grievance claiming that the third set of conferences violated Article VIII A(4). The Board denied the grievance, and the Association initiated binding arbitration proceedings. On December 9, 1982, arbitrator Stanley L. Aiges issued his award. He found that the Board had violated Article VIII A(4) but refused to order any specific relief.

The Board then initiated a proceeding in the Chancery Division of the Superior Court to vacate this award pursuant to N.J.S.A. 2A:24-7. On October 25, 1983, the Honorable Marshall Selikoff, J.S.C. entered an order transferring the case to this Commission for a scope of negotiations determination.^{2/}

In In re Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 77-27, 3 NJPER 17 (1976), we held that a decision to substitute additional parent/teacher conferences for teaching periods is

^{1/} The Board now disputes the arbitrator's factual findings that the lunch period was cut from 30 to 25 minutes and that there was a break of 25 instead of 50 minutes before the conferences started. The Association agrees with the arbitrator's finding of a five minute reduction in the lunch period, but is uncertain how long the pre-conference break lasted. In any event, the Association's basic contention is that regular 45 minute preparation periods were shortened to 25 minutes and on this fact there appears to be no dispute.

^{2/} Pursuant to In re Township of Ocean Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983), we have jurisdiction over this scope petition even though it was filed after the conclusion of arbitration proceedings. The Chancery Division has reserved for later determination, if necessary, any issues of waiver and estoppel that the Association may raise.

not mandatorily negotiable, but that any resulting increase in the length of the teachers' work day or other alteration in the teachers' terms and conditions of employment is mandatorily negotiable. Those principles are still applicable today.^{3/} Compare In re Mt. Laurel Twp. Bd. of Ed., P.E.R.C. No. 83-8, 8 NJPER 435 (¶13204 1982) ("Mount Laurel") (board may schedule additional parent/teacher conference at night, but must negotiate over compensation for extra hours worked). Thus, the Board has a non-negotiable managerial prerogative to determine, as it did, that an additional set of parent/teacher conferences was necessary to accomplish its educational goals.^{4/} It also has a non-negotiable managerial prerogative to substitute periods of parent/teacher conferences for periods of teaching assignments. It may not, however, unilaterally increase the overall amount of time spent within the work day either teaching or attending parent/teacher conferences without triggering its obligation to negotiate over compensation for additional time worked. Mt. Laurel.

^{3/} The actual result of that case, however, would be different today to the extent it held that the substitution of additional conferences for teaching periods is permissively negotiable and hence arbitrable. In Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978) ("Ridgefield Park"), our Supreme Court held that there are no permissive subjects of negotiation in the New Jersey public sector except insofar as police and firefighting employees are involved. See also Paterson PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981).

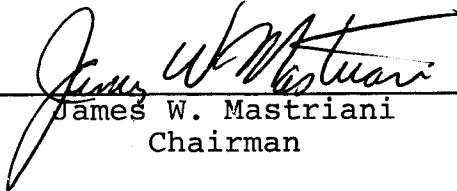
^{4/} The Board had also asserted that it had a contractual prerogative to schedule their conferences. We do not pass on the contractual merits of the arbitrator's ruling. In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975); Ridgefield Park.

Here, the Board did not simply substitute periods of parent/teacher conferences for periods of classroom teaching; instead, it collapsed the normal school day into half a day, thus proportionately reducing the time of all periods including preparation time, and scheduled conferences for the afternoon periods. It appears that this approach might generally have the mandatorily negotiable effect of decreasing preparation time and increasing time spent teaching and attending conferences.^{5/} In this case, however, it is unclear whether the Board's approach in fact decreased the total amount of non-teaching time since the number of preparation periods reduced is not in evidence and there is some dispute concerning the length of the lunch periods and break time before the conferences started. We do not believe it is necessary to resolve this dispute since the Board clearly had the managerial prerogative under Mount Laurel to schedule the third set of parent/teacher conferences and the arbitrator did not consider whether there was an increase in teaching time or order any specific remedy. For present purposes, then, it suffices to hold that the arbitration award is outside the scope of negotiations to the extent it holds the Board could not legally schedule a

^{5/} Consider this hypothetical. During a regular school day from 8:00 a.m. to 2:30 p.m., there are six 50 minute classroom teaching periods, one 50 minute preparation period, and one 40 minute lunch period from 12:10 to 12:50 p.m.; the amount of teaching time is 5 hours. If parent/teacher conferences were substituted for the two post-lunch periods and the seven non-lunch periods were pro-rated and compressed into the five pre-lunch periods, the amount of teaching time would increase to 5 1/4 hours.

third parent/teacher conference. For future purposes, the parties will have the benefit of this opinion for guidance should the Board wish to schedule additional conferences. We will issue no order since the Court has retained jurisdiction.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Suskin and Butch voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
April 12, 1984

ISSUED: April 13, 1984