

P.E.R.C. NO. 2002-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLLAND TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-16

HOLLAND TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a provision entitled miscellaneous/non-teaching duties that the Holland Township Education Association seeks to include in a successor agreement with the Holland Township Board. The Commission holds mandatorily negotiable a portion of the article that prevents the Board from regularly requiring teachers to duplicate instructional and other materials and a portion of the article concerning filing any records or materials in pupil's permanent record. The Commission holds not mandatorily negotiable a portion of the article which provides that teachers shall not regularly be required to maintain attendance registers and a portion of the article concerning grading standardized computerized tests.

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.

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Appearances:

For the Petitioner, Parker, McCay & Criscuolo, P.A.,
attorneys (James F. Schwerin, on the brief)

For the Respondent, Klausner & Hunter, attorneys
(Vikrant Kishin Advani, on the brief)

DECISION

On November 9, 2001, the Holland Township Board of Education petitioned for a scope of negotiations determination. The petition seeks a declaration that a contract provision the Holland Township Education Association seeks to retain in a successor agreement is not mandatorily negotiable.

The parties have filed briefs and exhibits. The Association has filed the certification of Susan H. Walther, a special education teacher and its chief negotiator. The Board has filed the certification of Linda Lubben, its chief school administrator. These facts appear.

The Association represents all teachers, classroom aides, clerks, secretaries and custodians. The parties' most recent collective negotiations agreement expired on June 30, 2001. They are currently in successor contract negotiations.

Article 9 of the expired agreement is entitled Miscellaneous/Non-Teaching Duties. The Board asserts that Section 9.3 is not mandatorily negotiable and should be deleted. That section provides:

- 9.3 Teachers shall not be required to perform the following duties on a regularly scheduled basis:
 - 9.3.1 Duplicating instructional and other materials; keeping attendance registers.
 - 9.3.2 Correcting standardized computerized tests used at the direction of the Board or the Administration.
 - 9.3.3 Filing any records or materials in a pupil's permanent record.

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

[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]

The Board argues that correcting tests, duplicating materials, and filing student records are incidental to a teacher's primary educational responsibilities and that restrictions on the assignment of those duties are therefore not mandatorily negotiable. It relies on Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987).

The Association asserts that none of these duties are related to student safety, security and control and all of them primarily affect teacher workload and work hours. The Association further asserts that these duties involve work traditionally performed by secretaries.

According to Walther, half of the teachers have homeroom duties where they log pupil absences. Absence slips are then sent to the office where a secretary records the absences in the master register. Walther states that it would be inefficient and inaccurate for teachers to keep separate attendance registers for their classes that would eventually go into the master register.

Walther also states that for over twenty years, one secretary in the school office has been responsible for duplicating instructional and other materials. Walther contends that there is only one copy machine in the school office and that duplicating is a significant task that would burden the teachers and reduce their preparation time.

With respect to correcting tests, Walther states that some standardized tests must be corrected by an outside institution and that teachers cannot correct them in-house.

Walther also certifies that a secretary has always filed test results and other records in students' files and that filing is not related to teaching duties. Walther states that test results and other important papers often arrive after the end of the school year when teachers are no longer at school.

Finally, the Association argues that even if we find that these assignments are non-negotiable, such issues as compensation, work hours, workload, and allocation of duties are mandatorily negotiable.

In response, the Board's chief school administrator certifies that teachers take daily attendance for their classes; a copier is available in the teachers' workroom for their use only; the Board is not now seeking to have teachers grade State tests; and teachers would be asked to file only materials arriving during their work year.

In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977), holds that teachers may negotiate over being required to perform non-teaching duties. Such duties includes clerical tasks that are not incidental to a teacher's primary responsibilities. See also Long Branch Bd. of Ed., P.E.R.C No. 93-8, 18 NJPER 403 (¶23182 1992) (covering main office by answering phones and monitoring student attendance while clerical employees were absent

found mandatorily negotiable). However, certain non-classroom assignments relating to student safety, security and control are not mandatorily negotiable because a board's educational policy concerns in those contexts outweigh the teachers' interests.

Even if some assignments are non-negotiable, claims for compensation resulting from workload increases or loss of preparation time are severable from the assignment of duties and are mandatorily negotiable. See, e.g., Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER 758 (¶17286 1986); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd NJPER Supp.2d 112 (¶92 App. Div. 1982). In addition, a grievance seeking adherence to preparation time guarantees or workload ceilings may be submitted to binding 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 NJPER Supp.2d 72 (¶55 App. Div. 1980). We now apply these principles and our precedents to Section 9.3.

We hold mandatorily negotiable the portion of Paragraph 9:3.1 that prevents the Board from "regularly" requiring that teachers duplicate instructional and other materials. As this language would not appear to bar the Board from assigning occasional duties to teachers, we find this case to be distinguishable from Bayonne. There we recognized that the tasks of copying and distributing tests were inherently clerical. 13 NJPER at 269. But under the particular circumstances of that case, we viewed the tasks

as incidental to teaching and restrained arbitration over the non-monetary portion of a grievance because:

[T]eachers had always copied and collated their own examinations; the tasks are performed only twice a year and may be shared among all committee members; and teachers have been relieved of the responsibility of preparing individual exams and have received release time from other duties for committee work.

Duplication of instructional materials has traditionally been a secretary's function and assignment of that task to teachers would reduce their preparation time. Secretarial character of duplicating materials is not changed by the facts that there is another copier in the teachers' workroom and that the secretary who does copying also has switchboard duties. If, in a particular circumstance like Bayonne, the Board directs a teacher to perform a task allegedly incidental to teaching and the Association grieves that assignment, the Board can file a petition and we will determine whether the non-compensatory aspects of such a grievance can be submitted to binding arbitration.

The portion of Paragraph 9.3.1 providing that teachers shall not regularly be required to maintain attendance registers is not mandatorily negotiable. See Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21 (¶29014 1997); Garfield Bd. of Ed., P.E.R.C. No. 90-48, 16 NJPER 6 (¶21004 1989). The Board seeks to have teachers monitor their students' attendance, not engage in the clerical function of maintaining a school-wide register. Contrast Long Branch Bd. of Ed.

Paragraph 9:3.2 is not mandatorily negotiable as written. West Windsor-Plainsboro Bd. of Ed., P.E.R.C No. 97-128, 23 NJPER 305 (¶28140 1997); Garfield Bd. of Ed., P.E.R.C No. 90-48, 16 NJPER 6 (¶21004 1989). The Board is not seeking to have teachers grade State tests. Thus, we need not address the Association's concern about the appropriateness of such assignments. The clause broadly prohibits grading responsibilities that are not purely clerical, but that relate directly to the assessment of student learning. Any alleged loss of preparation time due to the assignment of such duties could be grieved.


Paragraph 9:3.3 is mandatorily negotiable. Other than to assert that having a teacher file the result of a standardized test in a student's file is incidental to the task of correcting it, the Board presents no argument as to why Paragraph 9:3-3 is not negotiable. Nor has it pointed to any problems arising from the clause in the years that it has been in the parties' contract. Filing of student records appears to be primarily clerical and not incidental to a teacher's primary responsibilities.

Section 9.3 does not address severable and negotiable workload issues. The Board does not seek any determination that such issues are not mandatorily negotiable so we will not address them further.

ORDER

Paragraph 9:3.1 (except for the phrase "keeping attendance registers") and Paragraph 9:3.3 are mandatorily negotiable. The portion of Paragraph 9:3.1 concerning keeping attendance registers and Paragraph 9:3.2 are not mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Muscato was not present.

DATED: February 28, 2002
Trenton, New Jersey
ISSUED: March 1, 2002