

P.E.R.C. No. 90-33

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLEN RIDGE BOARD OF EDUCATION

Respondent,

-and-

Docket No. CO-H-89-86

GLEN RIDGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by the Glen Ridge Education Association against the Glen Ridge Board of Education. The charge alleged that the Board unilaterally increased teacher work assignments and student contact periods without negotiating compensation. The Commission finds, under all the circumstances, particularly in light of the parties total understanding and practice concerning teacher workload, that the evidence does not warrant finding an unfair practice.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLEN RIDGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-89-86

GLEN RIDGE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Moss, Esqs. (Lester Aron, of counsel)

For the Charging Party, Klausner, Hunter & Oxfeld, Esqs.
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On September 22, 1988, the Glen Ridge Education Association filed an unfair practice charge alleging that the Glen Ridge Board of Education violated subsections 5.4(a)(5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The charge alleges that the Board unilaterally increased teacher work assignments and student contact periods without negotiating compensation.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

On March 31, 1989, a Complaint and Notice of Hearing issued. After conferring with the assigned Hearing Examiner, the parties agreed to waive a Hearing Examiner's report and to submit a stipulated record to the Commission. N.J.A.C. 19:14-6.7.

The parties filed stipulations by May 3, 1989. Briefs and replies were filed by May 25, 1989.

Following are the verbatim:

STIPULATED FACTS

1. The parties are signatories to a Collective Bargaining Agreement for the period from July 1, 1988 through June 30, 1990.

2. Article 16 of that Collective Bargaining Agreement covers: Working Conditions.

3. 16.1 The Association and the Board agree that the teachers' responsibility to their students and their profession generally entails performance of duties and an expenditure of time beyond the assigned class periods.

16.2 As a professional, the teacher has the right and obligation with the accompanying responsibility to determine the time required to effectively discharge his duties. The work day shall consist of 7 1/2 hours to be determined by the building principal and to start no earlier than 7:30 a.m. and end no later than 3:30 p.m., unless a teacher volunteers. No future change may occur without negotiations. Extensions of the normal teacher responsibilities beyond the classroom may include meeting with parents to discuss areas of mutual concern. The administration shall not unilaterally extend this time.

16.3 The Board and the Association agree that proper implementation of the upgraded philosophy with the accompanying cooperative teaching and multi-age grouping requires definite and uninterrupted preparation time. To ensure that this time is available, the Board and Association

will strive for a goal of equal preparation time at the primary, middle school and high school levels.

16.5 All teachers shall be scheduled for a duty-free uninterrupted lunch period of at least thirty (30) minutes.

4. Prior to September of 1988, Glen Ridge Elementary School teachers adhered to the following supervisory schedule. This schedule had remained unchanged for at least ten (10) years.

Teachers were required to perform each of the following four (4) duties once every week six (6) days:

8:20 - 8:30 -- Outside supervision.

11:30 - 11:45 -- Cafeteria supervision.

11:45 - 12:00 -- On-call cafeteria duty.
(teachers permitted to be in their classrooms or in the teachers' cafeteria).

3:00 - 3:10 -- Outside supervision.

5. Beginning in September of 1988, Glen Ridge Elementary School teachers were required to perform each of the following duties twice every six (6) days:

8:15 - 8:30 -- Outside supervision

11:30 - 12:00 -- Cafeteria supervision

3:00 - 3:15 -- Outside supervision

6. Every Glen Ridge Elementary School teacher continues to have a minimum of eight (8) 40 minute preparation periods for every six (6) day cycle.

7. Every Glen Ridge Elementary School teacher continued to have at least thirty (30) minutes of duty-free lunch time per day.

8. The total increase in pupil contact time, i.e., supervision time, is a minimum of seventy (70) minutes every six (6) days or an average increase of 11.66 minutes if the prior "on-call cafeteria duty" was considered to be, in all instances "supervisory time."

9. Despite change in supervision time, Glen Ridge Elementary School teachers continue to have more preparation time than do middle school or high school teachers in the Glen Ridge school system.

10. A typical Glen Ridge Elementary School teacher enjoys 123 minutes of unassigned time each day. A typical middle school teacher enjoys 118 minutes of unassigned time per day, and a typical high school teacher enjoys 114 minutes of unassigned time per day. The 123 minute figure for Glen Ridge Elementary School teachers is the total amount of unassigned time after the change in supervisory schedules which occurred in September of 1988.

11. The parties jointly submit true copies of their collective negotiations agreement covering the period July 1, 1988--June 30, 1990 as J-1.

12. The parties stipulate that with respect to the unfair practice charge CO-89-86, the only issue before the Commission is whether under the stipulated facts the employer has engaged in unfair practices within the meaning of the Act.

13. The parties stipulate to waive a Hearing and Hearing Examiner's Recommended Report and Decision and they wish to send the matters directly before the Commission.

14. In so stipulating the parties recognize that the facts as stipulated constitute the complete record to be submitted to the Commission. The Charging Party is placed on notice that to the extent that the stipulated facts are insufficient to sustain charging party's burden of proof by a preponderance of the evidence, the complaint may be dismissed by the Commission. Similarly, the Respondent recognizes that it too must rely upon the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted or to rebut or disprove the existence of a prima facie case established by the Charging Party.

ANALYSIS

It is well-established that an increase in teacher workload and pupil contact time is mandatorily negotiable. See Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Maywood Bd. of Ed. v. Maywood Ed. Ass'n, 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); 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); 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), certif. den. 87 N.J. 310 (1981); 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); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984); Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No.

83-102, 9 NJPER 104 (¶14057 1982); Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982); East Newark Bd. of Ed., P.E.R.C. No. 82-123, 8 NJPER 373 (¶13171 1982); Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981); Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (¶10216 1979).

Substituting a teaching period for a duty period increases a teacher's workload and involves a mandatorily negotiable term and condition of employment. Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987); Buena Reg. School Dist., P.E.R.C. No. 86-3, 11 NJPER 444 (¶16154 1985). Similarly, substituting duty time for preparation time and supervision time for unassigned time implicates a mandatorily negotiable term and condition of employment. Lincoln Park; Deptford Tp. Bd. of Ed., P.E.R.C. No. 86-54, 11 NJPER 706 (¶16244 1985). As we stated in South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22, 23 (¶16011 1984):

It is well settled that a board's decision to require teachers to supervise students while at lunch, on the playground, or getting on or off buses is not mandatorily negotiable provided that duty does not displace an employee's agreed upon preparation time or other time free of pupil contact and provided the employer negotiates over compensation for that duty. Tenafly Bd. of Ed., P.E.R.C. No. 76-24, 2 NJPER 75 (1976) and Long Branch Ed. Assn. v. Bd. of Ed. of Long Branch, 150 N.J. Super 262 (App. Div. 1976, aff'd o.b. 73 N.J. 461 (1977)).

See also 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).

Thus, we find that this workload change involves a mandatorily negotiable subject of negotiations. Nevertheless, on

this record, we do not believe that the Board was obligated to negotiate before implementing this workload change.

The parties' agreement provides for a 7 1/2 hour work day (16.2). The increase was within the confines of that limit. The agreement recognizes that teachers must perform duties beyond the assigned class periods (16.1). Student supervision is one such duty. The agreement provides for at least thirty minutes of duty-free lunch (16.5). Each teacher continues to have that contractual amount. The agreement recognizes the goal of equal preparation time at the primary, middle and high schools (16.3). Elementary teachers retain eight 40 minute preparation periods every six day cycle and have more preparation time than other teachers. Finally, an elementary teacher still retains 123 minutes of unassigned time each day while teachers in the middle and high schools covered under the same contract typically have 118 and 114 minutes, respectively, of unassigned time per day. There is no specific contract language indicating that student supervision time at each school should be examined separately.

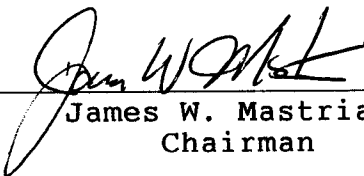
Under all the circumstances, particularly in light of the parties' total understanding and practice concerning teacher workload, we conclude that the evidence does not warrant finding an unfair practice. See Jamesburg Bd. of Ed., P.E.R.C. No. 80-56, 5 NJPER 496 (¶10253 1979), aff'd App. Div. Dkt. No. A-775-79 (12/9/80); see also Sussex-Wantage Reg. Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 711 (¶16247 1985); Linden Bd. of Ed., P.E.R.C. No.

84-137, 10 NJPER 349 (¶15162 1984); Randolph Tp. Bd. of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982); Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982); Freehold Bd. of Ed., P.E.R.C. No. 82-38, 7 NJPER 604 (¶12269 1981); Randolph Tp. Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980); Pascack Valley Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554 (¶11281 1980); Sayreville Bd. of Ed., P.E.R.C. No. 78-41, 4 NJPER 70 (¶4034 1978), aff'd App. Div. Dkt. No. A-2732-77 (2/6/79); cf. Caldwell-W. Caldwell Ed. Ass'n v. Caldwell-W. Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981); Maywood Ed. Ass'n v. Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div 1979), certif. den. 81 N.J. 292 (1979).

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Reid abstained. Commissioner Ruggiero was not present.

DATED: Trenton, New Jersey
October 27, 1989
ISSUED: October 30, 1989