

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEEHAWKEN EDUCATION ASSOCIATION,

Petitioner,

-and-

Docket Nos. SN-80-36 and
SN-80-37

WEEHAWKEN BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Commission considered scope of negotiations issues raised in two Petitions for Scope of Negotiations Determination filed by the Board of Education. Both cases arose subsequent to the issuance of arbitration awards and were filed pursuant to an order of the Honorable Frederick C. Kentz, Jr., J.S.C.. The Commission concluded that the increased workload found in the case decided by Arbitrator Doner resulted directly from the Board's decision to reduce instruction and staff in special subject areas. This issue is governed by the Appellate Division's decision in Maywood Board of Education, 168 N.J. Super. 45, pet. for certif. denied 81 N.J. 292 (1979). The award, therefore, related to a non-negotiable and therefore non-arbitrable grievance.

The second grievance also involved increased workload. To the extent that the increased workload resulted from the Board's reduction in the number of special teachers, the matter is non-negotiable and non-arbitrable. However, some of the preparation time changes and increases in class periods were not the result of staff lay-offs and therefore did relate to mandatorily negotiable subjects. See Board of Education of Fair Lawn v. Fair Lawn Education Association, ___ N.J. Super. ___ (App. Div. Docket No. A-2054-78, 12/10/79).

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Appearances:

For the Petitioner, Goldberg & Simon, Esqs.
(Mr. Louis P. Bucceri, of Counsel)

For the Respondent, Krieger & Chodash, Esqs.
(Mr. Harold Kreiger, of Counsel, Mr. Richard
Kay, on the Brief)

DECISION

This case, which involves two Petitions for Scope of Negotiations Determination, comes to the Public Employment Relations Commission from the Superior Court, Chancery Division, Hudson County (Docket No. C-4013-78), arising out of proceedings to confirm two arbitration awards involving the Weehawken Education Association ("Association") and the Weehawken Board of Education ("Board").

Pursuant to the October 1, 1979 order of the Honorable Frederick C. Kentz, Jr., J.S.C., the Association, on October 31, 1979 filed petitions with respect to each of the two arbitration awards. Docket No. SN-80-36 pertains to the March 28, 1979 award

of Arbitrator Max M. Doner, Esq. (hereinafter referred to as the "Doner Award") and Docket No. SN-80-37 refers to the May 14, 1979 award of Arbitrator Joseph P. Doyle ("Doyle Award"). Inasmuch as both awards are involved in a single court action, the instant decision will be rendered upon both scope petitions which are hereby consolidated.

Both awards were favorable to the Association and found that workload increases (through lost preparation time and/or increases in pupil contact time) were violative of collectively negotiated agreements in force between the parties.^{1/} When the Association sought to have the Superior Court confirm the awards, the Board argued that the awards were made with respect to non-negotiable matters and the Court granted a motion to transfer the negotiability issues to the Commission.^{2/} The Court, however, has retained jurisdiction of the remaining issues involved in the confirmation proceedings, pending a determination of the negotiability issues.^{3/}

The Doner Award

The grievance involved in the March 28, 1979 award of arbitrator Doner originated during the 1976-1977 school year and

- ^{1/} The grievance involved in SN-80-36 (the Doner Award) arose under the 1975-1977 agreement between the parties. The grievance and award by Doyle in SN-80-37 pertains to the 1977-1980 agreement.
- ^{2/} Arbitrator Doner ruled that the Board, which raised negotiability issues in its post-arbitration hearing brief, could not dispute arbitrability at that late a stage in the proceedings (Doner award at 4). Arbitrator Doyle held that the issue before him related to a term and condition of employment. (Doyle award at 6.)
- ^{3/} This is in accord with the guidelines set forth by the Supreme Court in Ridgefield Park Bd of Ed v. Ridgefield Park Education Assn, 78 N.J. 144 (1978) at 153-156.

was prompted by the Board's reduction at the Webster School of both the number of specialist teachers (music, cooking and physical education) and the amount of time students spend in instruction in these areas, which had been periods when regular classroom teachers were not involved in direct instruction or student contact and which were available for preparation or other activities. The parties prepared a table showing the amount of preparation time per week which was lost as a result of the Board's actions. The issue for arbitration as stipulated by the parties was:

Did the Board violate the Agreement when it failed to negotiate the impact of the reduction of Music, Cooking and Physical Education specialists at the Webster School? If so, what shall the remedy be, if any, with respect to each of the following thirteen (13) teachers for the 1976-77 school year?

In this proceeding, only the first question is relevant - not as to whether the Board violated the contract, but rather whether the impact on terms and conditions of employment of its reduction in the number of specialists and amount of specialist instruction is mandatorily negotiable.

This issue is virtually indistinguishable from one considered in the Commission's recent decision in In re West Caldwell Board of Education, P.E.R.C. No. 80-64, 5 NJPER ____ (1979). Applying the Appellate Division's decision in In re Maywood Board of Ed, 168 N.J. Super. 45, certif. den. ____ N.J. ____ (1979), the Commission said:

Contrary to the Hearing Examiner's conclusion that the facts in this case are distinguishable from those in Maywood, it is apparent from the findings of fact that the increase in workload for seventh grade core teachers was a direct result of the decision not to reemploy the foreign language teacher for the 1976-77 school year, due to the elimination of foreign language courses for the seventh grade. The core teachers were required to assume the additional responsibility of the instructional time previously covered by the seventh grade foreign language teacher who was eliminated as a reduction in force. Maywood clearly states that since the decision to reduce teacher personnel is a managerial prerogative, the impact - i.e., increased workload - on the remaining teachers is not negotiable.
P.E.R.C. No. 80-64 at 4. (footnotes omitted)

In the instant case, it is stipulated that the increased workload was a direct result (impact) of the Board's decision to reduce instruction and staff in special subject areas. Thus, the Doner Award was made with respect to a non-negotiable and therefore non-arbitrable grievance.^{4/}

^{4/} The Association cites a recent Appellate Division decision, Bd of Ed of Fair Lawn v. Fair Lawn Ed Assn, N.J. Super. (App. Div. Docket No. A-2054-78, 12/10/79), to support its argument that a loss of preparation time and increase in workload is mandatorily negotiable. The Court in Fair Lawn affirmed a decision of the Commission (P.E.R.C. No. 79-44, 5 NJPER 48 (¶10032 1979) which held that the Board's decision to require teachers to supervise students during music classes, where they previously had preparation time during the music classes, related to their terms and conditions of employment and was mandatorily negotiable. In Fair Lawn, there was no reduction in the number of music specialists or frequency of music instruction. The Board simply decided to take away teachers' preparation time. The loss of preparation time in the instant case was the direct result of staff reductions and is thus governed by the decision of the Appellate Division in Maywood. We do not hold that preparation time and workload are non-negotiable. Ample Court precedent, including Maywood itself (See 168 N.J. Super at 59-60), holds that these subjects are mandatorily negotiable. See also Red Bank Bd of Ed v. Warrington, 138 N.J. Super. 564 (App. Div. 1976) and In re Byram Twp. Bd of Ed, 152 N.J. Super. 12 (App. Div. 1977).

The Doyle Award

The grievance ruled upon by Arbitrator Doyle arose in the subsequent (1977-78) school year with respect to teachers at the Wilson, Webster and Roosevelt Schools. The facts as stipulated by the parties in arbitration show that at the start of the year the Board transferred four seventh grade classes out of the Wilson School to Webster and Roosevelt and increased class periods at Wilson by four minutes a week. The result was to deprive teachers at the Wilson School of a total of 120 minutes per week of preparation time. (Doyle Award at 2.) Other teachers at the Wilson School lost preparation time as a result of the reduction in the number and frequency of special teachers (i.e. the same issue in dispute in the Doner Award). Teachers at the Webster and Roosevelt Schools lost preparation time because special area teachers had to spread out their teaching time to include the new seventh grade classes, thus cutting down on the preparation time classroom teachers had previously had while the specialists were with their classes. The issue before the arbitrator as set forth in his opinion was:

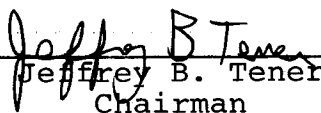
Did the Board of Education violate the contract when they failed to negotiate the impact on terms and conditions of employment of an administrative decision to move some seventh grades out of the Wilson School and relocate them in other elementary schools?

Unlike the facts in the Doner Award, the workload changes considered in this grievance were not solely the result of a layoff

of staff. The lost preparation time at the Wilson School and the Webster and Roosevelt Schools was attributable to the reduction in the number and frequency of special teachers, is the same issue presented in the Doner Award, and is non-negotiable. However, the 120 minutes per week of preparation time emanating from the increase in class periods was not the result of staff layoffs. Thus, this change is comparable to the situation which was present in Fair Lawn, supra, and other cases discussed in footnote 4, supra, and involved a direct alteration of mandatorily negotiable terms and conditions of employment (workload).^{5/}

Thus, we conclude that the Doner Award was rendered upon a non-negotiable issue. The Doyle Award, to the extent it involved workload increases resulting directly from the reduction in the number of special teachers also involved a non-negotiable issue. The remaining issues treated in the Doyle Award were made with respect to mandatorily negotiable terms and conditions of employment. Inasmuch as the Superior Court, Chancery Division, has retained jurisdiction over proceedings to confirm these awards, no order will be issued.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.
DATED: January 17, 1980
Trenton, New Jersey
ISSUED: January 18, 1980

^{5/} We would like to make clear that the arbitrator found as a fact that this increase in workload resulted neither from the reduction in the number of specialists nor in the Board's reorganization of the seventh grade program, matters which are not mandatorily negotiable.