

P.E.R.C. NO. 82-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-26

CINNAMINSON TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The New Jersey Public Employment Relations Commission restrains arbitration of four grievances which the Cinnaminson Teachers Association had filed against the Cinnaminson Township Board of Education. The grievances concerned changes on four occasions of the format of the high school day to accommodate student assemblies and pep rallies. The Commission holds that the changes were inspired by educational objectives and had a de minimis effect on pupil contact time.

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Appearances:

For the Petitioner, Charles P. Prato,
Superintendent

For the Respondent, Selikoff & Cohen, P.A.
(John E. Collins, of Counsel)

DECISION AND ORDER

On December 2, 1981, the Cinnaminson Township Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain arbitration of four grievances which the Cinnaminson Teachers Association (the "Association") has filed. The grievances concern the change on four occasions of the format of the high school day to accommodate special activity programs.

A normal school day consists of eight 44 minute periods, including a preparation and a duty-free lunch period. Total pupil contact time is 264 minutes. On September 25, October 2 and 16, 1981, the Board, in order to hold student pep rallies, changed the school day to nine 39 minute periods and required some teachers to supervise the rallies during the last period. Pupil contact time

for these teachers increased by nine minutes while both the preparation and duty-free lunch periods were shortened by five minutes.

On November 18, 1981, the Board, in order to hold an assembly, changed the school day to two 44 minute and seven 37 minute periods and required some teachers to supervise the assembly during the extra period. Pupil contact time for these teachers increased by nine minutes while both the preparation and duty-free lunch periods decreased by seven minutes. None of the changes lengthened the school day or imposed extra teaching assignments.

In its petition, the Board asserts that under Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980) and Caldwell-West Caldwell Ed. Ass'n v. Caldwell-West Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981), the changes in schedule predominantly concerned an educational goal with a minimal impact on the teachers.^{1/} In its brief, the Association responds that the Commission has held that changes in workload, teacher preparation time, and pupil contact time, and compensation for such changes are mandatorily negotiable terms and conditions of employment. See, e.g., In re Weehawken Bd. of Ed., P.E.R.C. No. 81-17, 6 NJPER 391 (¶11202 1980); In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 81-35, 6 NJPER 449 (¶11230 1980).

In Woodstown-Pilesgrove, the Supreme Court established a balancing test for determining the arbitrability of a teacher's

^{1/} The Board incorporated its legal arguments in its petition instead of filing a brief.

grievance: does the dominant issue involve an educational goal or the work and welfare of the teachers? We agree with the Board that the schedule changes here predominantly involve educational goals which only minimally affect the teachers' work and welfare.

In In re Caldwell-West Caldwell Ed. Assn, P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), the Commission held that the Board did not commit an unfair practice when it eliminated its foreign language program, substituted 15 extra minutes of both English and Social Studies instruction per day, and subtracted 30 minutes of cafeteria supervision duty from the schedule of affected teachers. The Appellate Division affirmed this ruling, concluding that when inspired by educational objectives, boards of education should have discretion to make changes which result in only minor deviations from past practice. The Court stated:

Thus, we are impelled to rule that a change from preexisting practice which is directly related to an educational purpose should not be measured by caliper and micrometer. Boards of education must be given some room to manage between contracts without being forced to bargain over every move they make. There must be some rounding of the edges of contention. The business of providing education is not an assembly line operation with productivity measured in discrete product units for which an exact exchange of compensation can be given. Cooperation of both sides is needed to fulfill the public trust of educating the children of this state in the time that runs from collective negotiation agreement to collective negotiation agreement. Disputes of a relatively minor nature arising in the interim must be quelled, and the aggregate of minor grievances should be resolved by compensatory across-the-board allowances in the next contract.
180 N.J. Super. at 449.

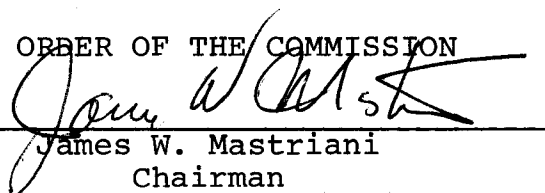
The Commission has held that a school board's decision to alter permanently the school day from seven to eight periods is a managerial prerogative. Bridgewater, supra. We believe that a

decision to alter temporarily the school day schedule is also a managerial prerogative, provided, as here and in Caldwell-West Caldwell, it is inspired by educational objectives and does not significantly burden teachers. While Bridgewater also holds that compensation for increased pupil contact time is ordinarily an arbitrable issue, here, the increase in the affected teachers' pupil contact time -- only a total of 36 non-teaching minutes over a two month period -- is de minimis. Caldwell-West Caldwell. Thus, the balance between the demonstrated educational objectives and the minimal impact on the teachers must result in a finding that the entire controversy is non-arbitrable. See, In re Pompton Lakes Bd. of Ed., P.E.R.C. No. 82-___, 8 NJPER ___ (¶ ___ 1982)^{2/}

ORDER

IT IS HEREBY ORDERED that the Cinnaminson Township Board of Education's request for a permanent restraint of arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted in favor of this decision. Commissioner Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
March 9, 1982
ISSUED: March 10, 1982

^{2/} We do not suggest that preparation time and workload are non-negotiable. As noted in Pompton Lakes, supra at n. 3: "There exists a long line of precedent upholding the negotiability of such subjects. See, e.g., Maywood Bd. of Ed. v. Maywood Ed. Ass'n, 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979); Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976)."