

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WANAQUE BOROUGH DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

WANAQUE BOROUGH EDUCATION
ASSOCIATION,

Docket Nos. SN-81-112,
SN-81-113 and SN-81-114

Respondent.

SYNOPSIS

The Commission, ruling upon three scope of negotiations petitions filed by the Wanaque Borough District Board of Education seeking restraint of the three grievances filed by the Wanaque Borough Education Association, holds 1) a grievance asserting that the Board changed terms and conditions of employment when it directed teachers to supervise students during the period prior to the start of classes, when teachers had duty free preparation time relates to a mandatorily negotiable term and condition of employment and is arbitrable; 2) a grievance challenging the Board's direction that teachers supervise students after classes, during a period where teachers were required to be available for individualized student instruction, did not relate to a mandatorily negotiable term and condition of employment and hence was non arbitrable, and 3) a grievance seeking compensation for teachers who are required to supervise additional students, when substitute teachers for an absent faculty member are not available, relates to a mandatorily negotiable term and condition of employment and is arbitrable.

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ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, John W. Finamore, Jr., Esq.

For the Respondent, Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, of Counsel)

DECISION AND ORDER

On June 29, 1981, the Wanaque Borough District Board of Education (the "Board") filed three Petitions for Scope of Negotiations Determination with the Public Employment Relations Commission seeking determinations as to whether certain matters in dispute between the Board and the Wanaque Borough Education Association (the "Association") are within the scope of collective negotiations.^{1/} The instant disputes arose with respect to three grievances which the Association seeks to submit to binding arbitration. The Board has objected to arbitration on the basis that the issues in dispute are neither negotiable nor arbitrable. Briefs were submitted by the parties by September 14, 1981.

^{1/} For purposes of this decision, the Commission has consolidated the three Scope of Negotiations Petitions.

State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), sets forth the definitive two-fold approach for determining whether a matter is within the scope of collective negotiations required by the New Jersey Employer-Employee Relations Act. First, the matter must concern a "term and condition of employment;" the Court defined this phrase as encompassing "...those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent managerial prerogatives pertaining to the determination of governmental policy." Id. at 67. Second, the matter, if a term or condition of employment, is mandatorily negotiable unless preempted by a specific statute or regulation which expressly "sets" that particular term or condition. State Supervisory defines "sets" as referring "...to statutory or regulatory provisions which speak in the imperative and leave nothing to the discretion of the public employer." Supra at 80. See also, Hoboken Board of Education and Hoboken Teachers Ass'n, P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981).

Further, the reach of a Commission decision on a scope petition contesting the arbitrability of certain issues is limited. In In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), we stated:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant,

whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

See also, Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

The first grievance arose because of a Board requirement that teachers supervise students admitted to school prior to the start of the normal school day. The teachers and students arrive at school at 8:45 a.m. and 9:00 a.m. respectively. On days when the weather is good, teachers use the fifteen minute period between their arrival time and the reporting time of students as a preparation period. However, on inclement days, the Board allows students to enter school between 8:45 and 9:00 a.m. and requires that teachers supervise these students.

The Association's grievance alleges that school principals, on any given day, interpret the term "inclement weather" in different fashions. The result of this practice is that a principal at one school may determine that the weather is inclement, thereby requiring teachers to supervise their students prior to 9:00 a.m., while a principal at another school may determine that the weather is not inclement, thereby allowing teachers to have a preparation period. The Association's grievance also alleges that the time when teachers must supervise students in inclement weather varies from school to school and that the Board's early

admission of students during inclement weather violates Article IV of the parties' collective bargaining agreement, which provides:

ARTICLE IV. Teaching Hours and Class Size

2. All teachers shall be released from pupil supervision and instruction for 200 minutes in each full school week and are to utilize these periods for class planning and class preparation.

3. Arrival time for teachers shall be fifteen (15) minutes before the commencement of school. Teachers shall accept and dismiss pupils in keeping with the building rules and regulations as approved by the Board....

The Board argues that its action involves the assignment of its teaching personnel for the supervision of students and is therefore an exercise of its managerial prerogative. The Association, on the other hand, maintains that the Board's action primarily affects the working hours and workload of employees and is a mandatory subject of negotiations.

The facts of this case closely resemble the facts in In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 80-13, 5 NJPER 414 (¶10216 1979) (Wanaque) and In re City of Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd App. Div. Docket No. A-954-79, pet. for certif. den. 87 N.J. 310 (1981) (Bayonne). In Wanaque, the dispute arose when the Board required a teacher to supervise a student during what was normally a 15 minute duty free period prior to the start of the normal school day. The Board argued that pursuant to In re Byram Twp. Bd. of Ed.

152 N.J. Super. 12 (App. Div. 1977) (Byram), a board of education may not negotiate away "its right and duty to assign teachers to supervisory tasks in exceptional cases, despite a resulting impingement upon their otherwise duty-free lunch periods." Id. at 24. The Commission, while "cognizant of the emergent nature" of situations where a board of education perceives a need to provide for the supervision of students, stated:

Nevertheless, the grievant/teacher was assigned to a supervisory task during what had previously been a duty-free time. This, according to the arbitrator, was a violation of the hours clause secured to the teachers through collective negotiations. If that clause is to have any meaning, then its breach, even for a legitimate purpose, must be remediable. This is not to say that the teacher could have refused to do the work; rather, we hold that a grievance seeking a remedy for a violation of a clause relating to terms and conditions of employment, in this case the additional work performed above that set forth in the contract, does concern a term and condition of employment and may be submitted to arbitration if the parties so agree.

Hence, the Commission finds that a provision in an agreement which provides for a period of time during the work day when teachers are not required to perform supervisory duties is one that relates to mandatory terms and conditions of employment, namely, workload and working hours. The Commission does not second guess the emergency need of the Board, nor the manner in which the Board chose to provide the necessary supervision. However, consistent with the purposes of the Act, the Commission finds the grievance to be arbitrable as it relates to a mandatorily negotiable subject. The responsibility of the Board to insure the safety and well-being of its students is not diminished nor undermined by requiring the Board to negotiate and, if it agrees to do so, to submit to arbitration a dispute regarding a remedy, if

appropriate, for the alteration of a negotiated term and condition of employment.
[Footnotes and citations omitted].^{2/}

In Bayonne, teachers were required to be in their homeroom classes to supervise students for part of what had been a fifteen minute duty-free period. Notwithstanding the argument that the infringement upon the teachers' duty-free period was necessary for reasons of safety and security, the Commission reiterated its holding in Wanaque, that a change from a duty-free time to a supervisory assignment is arbitrable if otherwise arbitrable under the parties' collective negotiations agreement.

Wanaque and Bayonne control the instant case. Accordingly, the Board's request for a permanent restraint of arbitration with regard to this grievance is denied.

The second grievance relates to the Board's alleged requirement that certain teachers utilize part of their after school time to supervise children waiting to board buses. The relevant provision of the parties' collective agreement states:

...On regular school days, following the dismissal of assigned students, the staff shall devote a minimum of fifteen (15) minutes or whatever time is necessary in his/her professional judgment for individual pupil educational activities....

^{2/} The Commission in Wanaque distinguished Byram because the teachers, as here, did not refuse to perform the assigned supervisory duties. Thus, the question of whether teachers could refuse to perform supervisory duties in an emergency was not presented in Wanaque. The same distinction applies here.

The Board asserts that it has a managerial prerogative to assign teachers to supervise school bus loading. The Association responds that the Board's action "interferes with a teacher who is attempting to give individualized pupil instruction." In addition, the Association argues that requiring teachers to supervise children who are waiting to board buses interferes with the teachers' class planning and preparation periods provided in the parties' collective agreement.^{3/}

The Commission cannot agree with the Association's characterization of the effects of the Board's action. We do not find that the provision in the parties' collective agreement requiring teachers to devote fifteen minutes after dismissal of students for individual pupil educational activities is, as the Association would have us believe, a preparation and planning period. The relevant contractual provision requires teachers, during the after-school period, to give individualized instruction to students. Thus, this period is part of the teachers' overall workload and pupil contact time. The Board's action in requiring teachers to supervise students waiting to board buses amounts to a substitution of one type of student supervision duty for another and does not affect the teachers' workload or duty free time as was the case with the pre-school hours grievance. Accordingly, the Board's request for a permanent restraint of arbitration of this grievance is granted.

^{3/} Article IV, Section II provides that:

All teachers shall be released from pupil supervision and instruction for 200 minutes in each full school week and are to utilize these periods for class planning and class preparation.

The third issue involves a grievance alleging that the Board violated a clause of the parties' agreement which provides, in part, that teachers who are required to supervise some or all of the students of an absent teacher when substitutes are unavailable will receive additional compensation.

The Board argues that pursuant to Ridgefield Park, supra and Byram, teacher assignments are matters of managerial prerogative which may not be negotiated. The Association emphasizes that the instant dispute predominantly concerns compensation and workload.

The Board's reliance on Ridgefield Park and Byram is misplaced. While the Board has an indisputable managerial right to assign teachers or hire substitutes,^{4/} the instant dispute focuses on the payment of additional compensation to teachers who have absorbed an increased workload. Pursuant to a long line of judicial and Commission decisions holding that compensation and workload issues are mandatorily negotiable, the Board's request for a permanent restraint of arbitration of this grievance must be denied.^{5/}

^{4/} Ridgefield Park, supra; Byram Twp., supra; In re Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979); In re Fairview Bd. of Ed., P.E.R.C. No. 80-32, 5 NJPER 400 (¶10207 1979).

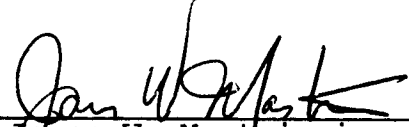
^{5/} See, e.g., Bd. of Ed. Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980); State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); and In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 81-35, 6 NJPER 449 (¶11230 1980).

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Wanaque Borough District Board of Education's requests for permanent restraints of arbitration with regard to the grievances concerning pre-school supervision of students and the compensation of teachers who are required to supervise students of absent teachers are hereby denied.

IT IS FURTHER ORDERED that the Wanaque Borough District Board of Education's request for a permanent restraint of arbitration with regard to the grievance concerning the supervision of students awaiting their buses is hereby granted and the Wanaque Borough Education Association is ordered to refrain from pursuing the grievance to binding arbitration.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners, Hartnett, Hipp, Newbaker, Parcels and Suskin voted in favor of all issues. Commissioner Graves voted in favor of the first and third issues (SN-113 and SN-114) but against the second issue (SN-112).

DATED: December 15, 1981
Trenton, New Jersey
ISSUED: December 17, 1981