

P.E.R.C. NO. 79-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE BOROUGH
OF FAIR LAWN,

Petitioner,

Docket No. SN-79-15

-and-

FAIR LAWN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission readdresses various issues concerning changes in workload as the result of a determination by the Board to require teachers, contrary to prior practice, to remain with their classes when the classes are with a specialty teacher. Relying on the Supreme Court's decision in Ridgefield Park Education Association v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) as well as several Appellate Division and Commission decisions, the Commission held that the change of a duty free period to a supervisory period is a change in workload and, as such, is a mandatory subject of negotiations. The Commission dismissed the Association's contention that the Board was estopped from seeking this determination because an arbitrator's award had already issued, citing Ridgefield Park, supra, which makes it clear that the Commission is the appropriate forum for scope of negotiations determinations.

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Appearances

For the Respondent, Goldberg & Simon, P.A.
(Mr. Theodore M. Simon, of Counsel)

For the Petitioner, Jeffer, Walter, Tierney, DeKorte,
Hopkinson & Vogel, Esqs., (Mr. Reginald F. Hopkinson,
of Counsel)

DECISION AND ORDER

On October 5, 1978, a Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission by the Board of Education of the Borough of Fair Lawn (the "Board") seeking a determination as to whether certain matters in dispute between the Board and the Fair Lawn Education Association (the "Association") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). All briefs were filed by December 1, 1978.

For six school years prior to the school year 1977-78, the practice of the Fair Lawn elementary schools was that a teacher was required to transfer his or her class to the music specialty teacher and, thereafter, the teacher had a duty free period. The Board

and the Association are parties to a collective negotiations agreement which provides at Article VIII E that a teacher shall have a duty free period when a specialist has the full class in charge.^{1/}

During the 1977-78 school year, the Board required teachers to remain with the class when the class was scheduled to be with the specialty teacher. The Association grieved this change and this dispute eventually was submitted to arbitration. On August 4, 1978, the arbitration award ordered the reinstatement of the duty free period. The arbitrator relied on the established practice and Article VIII E of the agreement. The Board now seeks to restrain enforcement of this award.

Citing Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), the Board contends that the denial of the release from duty of elementary school teachers during the time when the class is assigned to a music teacher is not negotiable nor arbitrable. The Board alleges that the unilateral change in the duty free period is a management prerogative exercised to promote the health, safety and welfare of the students.

The Association claims that the Board should be estopped

^{1/} Article VIII E

"At the elementary level, when a specialist has the full class in charge, the classroom teacher, other than a teacher serving her first school year in this school district, shall be free from duty, except for the time necessary to insure an orderly transition at the beginning and end of the period. Such orderly transition to be determined by the building principal."

from seeking a scope of negotiations determination where, in full cognizance of N.J.S.A. 34:13A-1 et seq., the Board nonetheless proceeded to arbitration in this matter. Additionally, the Association alleges that this is a dispute over a term or condition of employment which is mandatorily negotiable and therefore arbitrable.

In re Fairview Board of Education, P.E.R.C. No. 79-34, 4 NJPER ____ (Para. ____ 1978), the Commission addressed the issue of estoppel with respect to a scope of negotiations determination subsequent to an arbitration award. The Commission found that the Ridgefield Park, supra, decision makes it clear that the Commission is the appropriate forum for determinations as to whether a matter in dispute is within the scope of collective negotiations and that a public employer cannot abdicate its managerial prerogatives through collective negotiations. Contractual provisions which are not mandatorily negotiable are invalid and may not be enforced against an employer in an arbitration proceeding, notwithstanding the fact that an award has already issued.

Substantively, the issue in dispute is an issue which has been addressed numerous times. In Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976), the court held that the unilateral assignment of an additional teacher period in substitution for a preparation period while the teacher's regular class was being taught a "specialty" subject affected terms and conditions of employment and thus was arbitrable under the terms of the collective negotiations agreement. In Byram Township Board of Education v. Byram Township Education Association, 152 N.J. Super. 12 (App. Div. 1977), the court again found that work hours

and workload were mandatorily negotiable. The court, affirming the Commission's decision,^{2/} found these proposals to be mandatorily negotiable: (1) teachers in departmental areas should not teach more than five teaching periods or more than five hours per day, and (2) intermediate and lower elementary teaching time should not exceed five hours of pupil contact. Additionally, in In re Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977) motion for rec. P.E.R.C. No. 78-37, 4 NJPER 6 (Para. 4003 1978), Appeal pending App. Div. Docket No. A-1648-77, the Commission held that the change in workload caused by a reduction in force was mandatorily negotiable. The Board terminated two specialty teachers, causing the loss of an unassigned period for regular teachers. The Board was ordered to negotiate in good faith regarding this change in workload.^{3/}

Here, the Board is seeking to increase the workload of regular teachers by changing a duty free period to a supervisory period when the teacher's class is being taught by a specialty teacher. The alleged reason for this change is to promote the safety, health and welfare of students. It does not appear that the Association challenges the Board's argument that this goal is part of its management responsibility; however, it also appears that such additional supervision might be accomplished in numerous other ways including the hiring of additional teachers.

^{2/} P.E.R.C. No. 76-27, 2 NJPER 143 (1976).

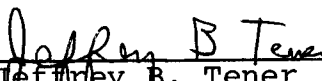
^{3/} It is noted that the Board herein appears to concede that the workload of teachers is affected by the Board's decision. (Petitioner's Brief, p.4).

The crucial point is that the Board can meet its stated objectives without violating its contract with the teachers. In this case the Board has decided to choose a method of implementation which eliminates the duty free period previously enjoyed by teachers. This is a change in workload which clearly affects public employees' terms and conditions of employment and is mandatorily negotiable. In the instant case the Board is free to negotiate a change in the duty free period practice when the current contract expires. But under the current contract, that term and condition of employment is fixed by the parties' expressed agreement, as found by the arbitrator.

ORDER

Based upon the above discussion, the Public Employment Relations Commission hereby determines that a duty free period is a required subject of collective negotiations. Because the subject in dispute is a required subject of negotiations which is also arbitrable if arbitrable under the terms of the parties' agreement, we do not determine whether we have the authority to restrain the Fair Lawn Education Association from seeking enforcement of the arbitration award. The Board's request for such a restraint is denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained. Commisisoner Graves was not present.

DATED: Trenton, New Jersey
January 16, 1979
ISSUED: January 17, 1979