

P.E.R.C. NO. 81-143

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOBOKEN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-70

HOBOKEN TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines that a grievance filed by the Hoboken Teachers Association is mandatorily negotiable and may be submitted to arbitration pursuant to the parties' collectively negotiated agreement. The grievance concerned an increase in the workload of school nurses employed by the Board and represented by the Association who were assigned to teach classes in addition to their school nursing duties. Accordingly, the Board of Education's request for a permanent restraint of arbitration was denied.

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Appearances:

For the Petitioner, Lowenstein, Sandler, Brochin,
Kohl, Fisher & Boylan, P.C.
(Gregory B. Reilly, of Counsel, Ina B. Lewisohn,
on the Brief)

For the Respondent, Gerald Lange, NJEA UniServ
Field Representative

DECISION AND ORDER

On February 24, 1981, the Hoboken Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Hoboken Teachers Association ("Association") are within the scope of collective negotiations under the New Jersey Employer-Employee Relations Act. Briefs were submitted by both parties, the last of which was received on March 30, 1981.

At issue herein is the grievability/arbitrability of the Board's action in assigning school nurses to teaching duties. The Association, in its grievance, sought a rescission of the Board's

assignment as well as additional compensation in time or money.^{1/}

The Board, in its brief, maintains that its action was a proper "exercise of its managerial discretion in devising a health education curriculum and reassigning certain certified school nurses to teach health classes in lieu of non-teaching duties." In addition, the Board submitted a letter on April 3, 1981, which contained a copy of the Job Description for school nurses to support the Board's position that "school nurses are teaching staff members, and reassignment of teaching staff within their area of certification is neither negotiable nor arbitrable."

The Association states in its brief, that it "is not contesting the Board's right to assign but is grieving the additional workload." Thus, while the Board maintains that the nurses were assigned teaching duties in lieu of non-teaching duties, the Association's position is that the nurses were required to teach health classes in addition to their normal duties, thereby increasing their workload.

After careful consideration of the briefs presented by the parties, and the grievance which has raised the instant dispute, we find that the issue before us is limited to the

^{1/} The grievance filed by Association members on October 1, 1980, states: "On September 8, 1980 the grievants began teaching health classes to students in grades varying from K-8. It is the contention of the grievants that the assignment to teach health classes is a violation of the contract between the HTA and the Hoboken Board of Education. The grievants seek the elimination of the teaching of health classes and reassignment solely to the fulfillment of the duties of school nurse as they have existed prior to this change. In addition, compensation in terms of time or money for hours spent in additional preparation and the performance of additional duties is expected."

"workload" aspects of the Association's grievance. By admission, the "assignment" issue raised by the Association in its grievance has been abandoned.

Accordingly, the issue herein is whether the subject of "workload" is a term and condition of employment and thus mandatorily negotiable. We have previously found that "workload" is a term and condition of employment, and that a grievance related thereto may be submitted to arbitration. The Superior Court, Appellate Division, in affirming our determination that a grievance related to reduced preparation period time was a mandatorily negotiable workload issue and could be submitted to arbitration, stated:

...New Jersey courts have consistently found that a teacher's workload is a term and condition of employment which is mandatorily negotiable, even though the change in workload was caused by a change in educational policy. See, Bd. of Ed. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, [81 N.J. 582 (1980)]; Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 12 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); In re Byram Twp. 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); In re Galloway Twp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978).
In re Newark Bd. of Ed. and Newark Teachers Union, App. Div. Docket A-2060-78 (decided 2/26/80).

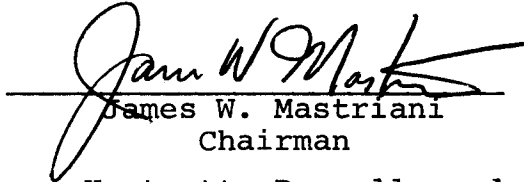
Subsequent to Newark, our Chairman found that the teaching workload of specialist teachers, including the number of teaching periods assigned, is a mandatory subject for negotiation. In re Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980). Similarly, we conclude herein that the issue of additional

workload arising from the assignment of teaching duties to school nurses is a mandatory subject for negotiation which may be submitted to arbitration, if otherwise arbitrable under the parties' agreement.^{2/}

ORDER

For the foregoing reasons, we find that the issues of workload raised by the Association in its grievance may be submitted to the binding arbitration provisions of its collective negotiations agreement with the Board.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981

^{2/} See, Ridgefield Park Ed Ass'n v. Ridgefield Park Bd of Ed, 78 N.J. 144, 153-156 (1978), where the court discusses the proper procedure in resolving scope of negotiations cases and cited approvingly the Commission's description of its role in such cases:

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. 78 N.J. at 154.

Since we are not reviewing whether in fact additional workload has been imposed on the nurses, we shall not pass upon the Board's submission that we should deny arbitration as an exercise of "futility" since the Association members cannot demonstrate damages. This issue is appropriately addressed to the arbitrator.