

P.E.R.C. NO. 2003-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GUTTENBERG BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-19

GUTTENBERG EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds the subject of a grievance filed by the Guttenberg Education Association against the Guttenberg Board of Education Association to be not mandatorily negotiable. The grievance alleges that requiring homeroom teachers to collect lunch money each day violates the parties' collective negotiations agreement. The Commission finds that while the task, viewed in isolation, is administrative or clerical, it is intertwined with such duties of a homeroom teacher as taking attendance, determining daily participation in the lunch program, and making announcements. The Commission therefore concludes that the Board's interest in consolidating these pre-instructional duties in the homeroom period outweighs the Association's interest in having homeroom teachers not perform this task.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Giblin & Giblin, attorneys
(John L. Schettino, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, on the brief)

DECISION

On September 26, 2002, the Guttenberg Board of Education petitioned for a scope of negotiations determination. The Board denied a grievance filed by the Guttenberg Education Association. The grievance alleges that requiring teachers to collect lunch money each day violates the parties' collective negotiations agreement. The contract clause alleged to have been violated was an issue in the parties' negotiations for a successor contract. Pursuant to a fact-finder's recommendation, the Board filed this petition seeking a determination concerning the negotiability of the disputed contract clause.

The parties have filed briefs and exhibits. These facts appear.

The Association represents teachers and certain other personnel. The parties' collective negotiations agreement expired on June 30, 2001. The grievance procedure ends in binding arbitration. The parties entered into negotiations for a successor agreement and have proceeded to factfinding.

Article XXI is entitled Employee Rights. Section (e) states that "No teacher shall be required to collect lunch or recess milk money."

On March 8, 2002, the Association filed a grievance asserting that teachers have been collecting lunch money each day in violation of Article XXI(e). On that same date, the superintendent responded that the staff is to continue the current method of collecting lunch money until further notice. He stated that "because of past practice and with the exercise of administrative management prerogative, this present system will remain in effect."

On June 11, 2002, the Board's attorney wrote to the Association president concerning the grievance. He stated that regardless of the language of the clause, teachers have been collecting lunch and recess milk money for several years. He also stated that the prohibition in the contract is contrary to managerial prerogatives and is therefore void. He denied the grievance.

The parties addressed Article XXI during negotiations for a successor agreement. On September 18, 2002, a fact-finder issued a report and recommendations for settlement to resolve the parties' negotiations. With respect to Article XXI, he stated:

There is an existing grievance concerning the contractual reference to prohibition to teachers collecting lunch money. The Board disputes the negotiability of the grievance asserting that the collecting of lunch money is a management prerogative. There is a statutory procedure which the Board can access for a determination on this negotiability issue. I recommend that this grievance be held in abeyance pending the filing of a scope of negotiations petition on this issue with PERC providing that this filing is made within thirty (30) days of this Report and Recommendations. In the event that the grievance is found to be mandatorily negotiable, the Fact-Finder shall retain jurisdiction over the grievance.

This petition ensued.

The Guttenberg school district is a one building K-8 school with approximately 925 students. The Board's lunch program serves 635 children. This program requires the children to complete an eligibility application which is processed by the business office and a determination is made as to whether the student is entitled to a reduced-cost or free lunch. Teachers are informed of the eligible children and the teacher aide fills out a monthly student lunch eligibility form. On a daily basis, homeroom teachers are required to collect the lunch money from children purchasing lunch that day. The teacher aide then picks

up the lunch money from the homeroom teachers. The Board states that the homeroom teachers have been required to collect the lunch and recess milk money since 1980 and have done so on a daily basis since then. Teachers are also required to take attendance and make announcements.

The Board asserts that the collection of lunch money during homeroom is a managerial prerogative and is consistent with past practice and a teacher's typical homeroom duties and responsibilities.

The Association responds that collecting lunch and milk money is a purely clerical function that is unrelated to a teacher's primary function of educating pupils or any other significant educational policy. The Association also asserts that the Board's past practice argument is a contractual defense to be raised before an arbitrator.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the

public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

Teachers may negotiate over the subject of having to perform certain non-teaching duties. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977). Such duties include clerical or other tasks that are not incidental to a teacher's primary responsibilities. See, e.g., Bryam (moving furniture and other custodial tasks); Holland Tp. Bd. of Ed., P.E.R.C. No. 2002-47, 28 NJPER 150 (¶33051 2002) (filing standardized tests in student files; regular copying of instructional materials); Paterson State-Operated School Dist., P.E.R.C. No. 98-29, 23 NJPER 514 (¶28250 1997) (clerical tasks not incidental to teachers' normal assignments); Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992) (covering main office by answering phones and monitoring student attendance while clerical employees were absent).

Clerical or other non-teaching duties that are incidental to a teacher's primary responsibilities are not mandatorily negotiable. Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987). Nor are non-classroom duties that are related to student safety, security and control. Byram. In these contexts, a board's educational policy concerns outweigh

the teachers' interests. When teachers are assigned to such duties, other aspects of the assignment, including accepting volunteers, assigning by rotation, and compensation, are mandatorily negotiable. Paterson; Old Bridge Bd. of Ed., P.E.R.C. No. 95-19, 20 NJPER 334 (¶25175 1994); Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER 758 (¶17286 1986). Further, a grievance seeking adherence to preparation time guarantees or workload ceilings may be submitted to binding arbitration.

This dispute centers on whether the collection of lunch money is incidental to a homeroom teacher's primary duties. Among the tasks we have found to be incidental to teaching are maintaining an attendance register and grading computerized standardized tests. We reasoned that keeping a class register involves teachers' monitoring of their students' attendance, as distinguished from the purely clerical task of maintaining a school-wide register. Holland; see also Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21 (¶29014 1997); Garfield Bd. of Ed., P.E.R.C. No. 90-48, 16 NJPER 6 (¶21004 1999). Similarly, we concluded that correction of standardized tests is not purely clerical but is directly related to the assessment of student learning. Holland; West Windsor-Plainsboro Bd. of Ed., P.E.R.C. No. 97-128, 23 NJPER 305 (¶28140 1997); see also Bayonne (twice-annual requirement to copy and distribute tests formulated by

teachers' committee not mandatorily negotiable because it was incidental to the primary objective of test development).

Finally, in Paterson, we found to be not mandatorily negotiable both lunchroom supervision and the clerical duties related thereto.^{1/}

Applying these precedents to the particular facts of this case, we conclude that a prohibition against teachers collecting student lunch money as part of their homeroom class assignment is not mandatorily negotiable. While the task, viewed in isolation, is administrative or clerical, it is intertwined with a homeroom teacher's normal assignment, which entails such duties as taking attendance, determining daily participation in the lunch program, and making announcements. Those duties are a necessary precursor to the delivery of educational services and involve the relationship between student and teacher, albeit in a pre-instructional context. Compare Bayonne (when duties congruently involve the relationship of students and teachers, they are part of the teacher's primary educational function). In this posture, we find that the Board's interest in consolidating these pre-instructional duties in the homeroom period outweighs the

^{1/} One of the non-teaching duties in the disputed clause was collection of lunch money. However, since it was not clear when the money was required to be collected, it was not clear whether it was one of the clerical duties associated with lunchroom supervision.

teachers' interest in having homeroom teachers not perform this task.

ORDER

The subject of the grievance seeking enforcement of Article XXI is not mandatorily negotiable.

BY ORDER OF THE COMMISSION



Millicent A. Wasell

Chair

Chair Wasell, Commissioners DiNardo, Ricci and Sandman voted in favor of this decision. Commissioners Buchanan and Katz voted against this decision. Commissioner Mastriani was not present.

DATED: April 24, 2003
Trenton, New Jersey
ISSUED: April 25, 2003