

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-64

ELIZABETH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Elizabeth Board of Education for a restraint of binding arbitration of a grievance filed by the Elizabeth Education Association. The grievance contests the Board's decision to institute block scheduling for 9th and 10th grade teachers and seeks compensation for increased instructional time. The Commission grants the restraint of arbitration to the extent the grievance challenges the implementation of block scheduling. The restraint is denied to the extent the grievance challenges an alleged uncompensated increase in teacher workload.

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.

P.E.R.C. NO. 2004-9

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Appearances:

For the Petitioner, The Murray Law Firm, LLC, attorneys  
(Mary E. Hennessy-Shotter, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys  
(Arnold Shep Cohen, on the brief)

DECISION

On May 14, 2003, the Elizabeth Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Elizabeth Education Association. The grievance contests the Board's decision to institute block scheduling for 9th and 10th grade teachers and seeks compensation for increased instructional time.

The parties have filed briefs and exhibits. The Board has filed the certification of the high school principal. The Association has submitted the certification of its vice-president. These facts appear.

The Association represents teachers and certain other employees. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 2001 through June 30, 2004. The grievance procedure ends in binding arbitration.

In response to an increase in the number of students projected for the 2001-2002 school year, the Board considered opening more classrooms and adding more periods to the high school day. Discussions took place during the 2001-2002 school year and the School Management Team recommended that the number of periods increase at the beginning of the 2002-2003 school year. The Board and the Association negotiated a Memorandum of Agreement establishing a ten-period day to take effect during the 2002-2003 school year. The agreement, executed on August 27, 2002, provides, in part:

1. There shall be a ten (10) period teaching day. Each period shall be forty-two (42) minutes in length with (4) minutes passing time between periods. The teachers' school day will otherwise not be affected. Teachers will continue to work six (6) hours and fifty (50) minutes per day on one (1) of two (2) shifts: 7:30 a.m. - 2:20 pm. (periods 1 - 9) or 8:15 a.m. - 3:05 p.m. (Periods 2 - 10).
2. The nine (9) assigned periods shall be:
  - 5 teaching periods
  - 1 regular preparation period
  - 1 duty free lunch
  - 1 duty period
  - 1 coverage-duty/preparation period

3. The coverage-duty/preparation period shall be utilized in the following manner:
  - a. Teachers shall be on call everyday for either covering a class or for being assigned a duty by the administration.
  - b. If no class coverage or duty is assigned, teachers shall have a preparation period.
  - c. The first ninety (90) class coverages and/or duties are free; i.e., teachers will receive no compensation.
  - d. Beginning with the ninety-first (91st) coverage and/or duty, compensation shall be at the negotiated contractual rate.
  - e. Class Coverage or duty assignments will be made on a rotational basis so as to maintain an equitable distribution of assignments.
  - f. All classroom teachers will be assigned this period.
  - g. To the extent possible the class coverage assignments shall be first made by the administration in this period before using the regular preparation period. Teachers assigned to cover classes during their regular preparation periods shall receive the contractual compensation as per the negotiated agreement.

During the 2002-2003 school year, the Board began to phase in block scheduling at Elizabeth High School for the 9th and 10th grades. As part of the whole school reform, the high school is divided into learning communities. The communities consist of five teachers in these subjects: Math, Science, English, Social

Studies and Special Education. Each community consists of 105 to 120 students in the 9th and 10th grades.

The schedule implemented for learning community teachers called for five days of block scheduling. The Board states that the schedule was modified to four days based on an analysis and recommendation made by the learning community teachers. The teachers who are not subject to block scheduling teach 42 minute periods.

On October 4, 2002, the high school principal e-mailed the learning community teachers. He commended them for the fine work that they had done in planning for block scheduling and advised them that block scheduling would begin on Monday, October 7.

On December 3, 2002, the Association filed a grievance alleging that the Board had violated Article II of the parties' agreement "by instituting block scheduling just after having negotiated a 10-period day with the Association." Article II is the parties' negotiations procedure. By way of remedy, the grievance seeks a return to the ten-period schedule and compensation to all affected teachers for extra instructional time. The grievance was denied at all levels. On January 7, 2003, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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. [Id. at 154]

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]

No preemption argument is made.

The Board argues that block scheduling is a matter of educational policy and that arbitration should be restrained to

the extent the Association seeks to arbitrate the Board's prerogative to implement that policy and the new teaching schedule. It further argues that implementation of block scheduling had no effect on the ten-period agreement and has not increased student contact time for block scheduling teachers because they previously monitored the halls during the four-minute passing time. It recognizes that the four minutes is now used for teaching, but notes that periods were reduced from 45 minutes to 42 minutes, and contends that as all teachers have 46 minutes of contact with students during a class period, there was no workload increase. The Board also states that learning community teachers have a regular preparation period and a community preparation period, but they do not have a duty period. The 11th and 12th grade teachers have a preparation and duty period and they also monitor hallway passing of the 11th and 12th grade students.

The Association asserts that if the Board had some compelling educational reason for the block scheduling change, it should have mentioned it during the negotiations that led to the ten-period agreement. The Association also points out that the Board and Association negotiated to change the teaching periods for all teachers from 45 to 42 minutes. The teachers who are not subject to block scheduling are working under those terms, but the block scheduling teachers now have four extra minutes of

instructional time instead of the four minutes of duty time monitoring halls between classes. The Association argues that a change from duty time to instructional time, and compensation for increased workload are mandatorily negotiable subjects.

A school board has a prerogative to determine the structure of the school day and to establish block scheduling. Jersey City School Dist., P.E.R.C. No. 97-151, 23 NJPER 396 (¶28182 1997); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238 (¶28114 1997). Thus, to the extent the Association seeks to arbitrate the Board's prerogative to implement block scheduling, we restrain binding arbitration. Jersey City.

However, the prerogative to implement block scheduling does not extend to compensation issues or other changes in mandatorily negotiable working conditions. See South Brunswick (arbitrator may hear grievance asserting board violated contract by assigning block schedule calling for more than four instructional periods in a row); Jersey City (compensation for alleged workload increase under block schedule legally arbitrable). See also Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Westfield Bd. of Ed., P.E.R.C. No. 2002-41, 28 NJPER 135, 137 (¶33042 2002); Middletown Tp. Bd. of Ed., P.E.R.C. No. 98-74, 24 NJPER 19 (¶29013 1997); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd NJPER Supp.2d 225 (¶196 App. Div. 1990); Ramsey Bd. of Ed.,

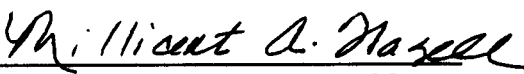


P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd NJPER Supp.2d 160 (¶141 App. Div. 1986); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984); Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶14057 1983). Accordingly, the restraint is denied to the extent the grievance challenges an alleged uncompensated increase in teacher workload.

ORDER

The request of the Elizabeth Board of Education for a restraint of arbitration is granted to the extent the grievance challenges the implementation of block scheduling. The restraint is denied to the extent the grievance challenges an alleged uncompensated increase in teacher workload.

BY ORDER OF THE COMMISSION

  
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Millicent A. Wasell  
Chair

Chair Wasell, Commissioners DiNardo, Katz, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

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