

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

Docket No. SN-79-27

-and-

NEWARK TEACHERS' UNION,
LOCAL 481, AFT, AFL-CIO,

Respondent.

SYNOPSIS

In a Scope of Negotiations Determination, the Commission concludes that preparation periods for teachers is a mandatorily negotiable subject. Given the direct implications for workload and court decisions in the Dunellen Trilogy, In re Byram Township, 152 N.J. Super 12 and Red Bank v. Warrington, 138 N.J. Super 564, no other conclusion could be reached. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144 does not in any way change the standards for determining whether or not a subject matter is mandatorily negotiable.

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Appearances:

For the Petitioner, Cecil J. Banks, Esq.,
General Counsel (Lois N. Kauder, Esq.
Associate Counsel, of Counsel and on the Brief)

For the Respondent, Liss & Meisenbacher, Esqs.
(Raymond Meisenbacher, Esq., of Counsel, on the
Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on November 20, 1978 by the Newark Board of Education (the "Board") seeking a determination as to whether a matter in dispute between the Board and the Newark Teachers' Union, Local 481, AFT, AFL-CIO (the "NTU") is 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"). Also sought was a restraint of arbitration on a grievance filed by the NTU relative to the matter in dispute.

A formal Order to Show Cause with restraints was filed by the Board and a hearing was held before Special Assistant to the Chairman Stephen B. Hunter who issued a decision designated as P.E.R.C. No. 79-24, 4 NJPER ____ (¶ 1978) denying the request for restraint of arbitration pending a final decision on the Scope of Negotiations Petition.

At issue is whether teacher preparation periods are a mandatory subject of negotiations. The Board relies on Ridgefield Park, 78 N.J. 144 at 156, wherein mandatory items are defined as those intimately and directly affecting the work and welfare of public employees, negotiations on which would not significantly interfere with the exercise of inherent management prerogatives. Because the parties' contract provides that preparation periods are not to be considered free periods, the Board argues that this matter is distinguishable from cases such as Byram Twp. Board of Education v. Byram Twp. Education Assn., 152 N.J. Super. 12 (App. Div. 1977) and Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976), which held preparation time to be mandatorily negotiable.

We do not believe that the Board's position is well taken, and the Special Assistant was correct in concluding that preparation periods are mandatorily negotiable under Ridgefield

Park and Dunellen Ed. Assn v. Dunellen Board of Education, 64 N.J. 17 (1973). It was clearly established in Burlington County College Faculty Assn v. Board of Trustees, 64 N.J. 10 (1973) that workload is mandatorily negotiable. We do not perceive how removal of a preparation period to be replaced by teaching is not a change in workload falling precisely under Burlington, Byram and Red Bank, supra. Even though preparation periods may have been required to be used for educational purposes, there is still additional work to be performed, and we doubt that the Board would seriously contest that teachers must still do as much - or, given the extra class to be taught, more - preparational work as before the shift.

Despite the Board's contention that the precedent on this topic is outdated due to being pre-Ridgefield Park, that is not at all the case. Both the Courts and the Commission have consistently applied the Dunellen standards affirmed in Ridgefield Park in deciding whether a subject was mandatorily negotiable. Only when the answer to that initial question is negative has Ridgefield Park wrought a change - the abolishment of non-mandatory subjects as being "permissively" negotiable.

In its brief the Board refers to the amount of time necessary for preparation and consultation as a major educational decision outweighing the effect on teachers' work and welfare. Yet that does not differ from the hours of work to be performed which was unhesitatingly labeled a term and condition of employment within the contemplation of the Act by the Supreme

Court in Englewood Board of Education v. Englewood Teachers Assn, 64 N.J. 1, 7 (1973). Nor can the generalized directives for thorough and efficient education - as opposed to specific standards that are set by statute - be used to circumvent the duty to negotiate. State v. State Supervisory Employees Assn, 78 N.J. 54 (1978). If the Board believes these changes are necessary, it is free to maintain that position in negotiations for a successor agreement and has no duty to give in on that score.^{1/}

Should preparation periods not be held mandatorily negotiable, not only would we be disregarding Red Bank and Byram, but also the Dunellen Trilogy^{2/} insofar as it declares that workload is to be negotiated. Such a decision would tend to emasculate collective negotiations in the New Jersey public sector and that is not the intent of the Legislature or the Supreme Court in Ridgefield Park and its other recent decisions.^{3/}

There is no reason why this matter cannot proceed to arbitration as long as it is otherwise arbitrable under the parties' contract.

^{1/} Council of New Jersey State College Locals, 1 NJPER 39 (1975), aff'd, 141 N.J. Super. 470 (App. Div. 1976).

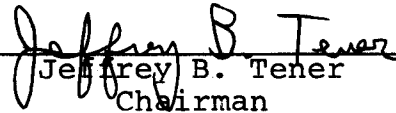
^{2/} Dunellen, Burlington and Englewood, supra.

^{3/} State Supervisory Employees Assn, supra; Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn, 78 N.J. 25 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn, 78 N.J. 1 (1978); Red Bank Regional Ed. Assn v. Red Bank Regional H.S. Bd. of Ed., 78 N.J. 122 (1978) and West Windsor Tp. v. Public Employment Relations Commission, 78 N.J. 98 (1978).

ORDER

In accordance with the above decision and pursuant to N.J.S.A. 34:13A-5.4(d), the Commission hereby determines that the subject matter of preparation periods is a required subject for negotiations. Consequently, a grievance relating to preparation periods may be submitted to arbitration if the grievance is otherwise arbitrable under the parties' collective negotiations agreement. Therefore, IT IS ORDERED that the request of the Newark Board of Education for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

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