

P.E.R.C. NO. 87-92

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-96

NORTH BERGEN FEDERATION OF  
TEACHERS, AFT LOCAL 1060,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the North Bergen Federation of Teachers, AFT Local 1060 against the North Bergen Board of Education. The grievance challenges a Board directive that tests be conducted on a specific day. The Commission finds that the dispute involves the Board's prerogative to make educational policy decisions and therefore is neither negotiable nor arbitrable.

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Appearances:

For the Petitioner, Mark Ruderman, Esq.

For the Respondent, Victor P. Mullica, Esq.

DECISION AND ORDER

On June 5, 1986, the North Bergen Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The petition seeks a restraint of binding arbitration of a grievance filed by the North Bergen Federation of Teachers, AFT Local 1060 ("Local 1060"). That grievance challenges a Board directive that tests be conducted on a specific day.

The parties have submitted briefs and documents. The following facts appear.

Local 1060 is the majority representative of the Board's teachers. The Board and Local 1060 are parties to a collective negotiations agreement which provides for binding arbitration of grievances.

It has been a long-standing practice for high school teachers to administer exams on a specific day during the first marking period. In January 1985, the high school principal issued a directive requiring teachers to administer exams on a specified date within the second marking period.

Local 1060 filed a grievance challenging this requirement.<sup>1/</sup> After the grievance was denied, a demand for arbitration was filed which sought as a remedy a "return to the past practice of giving marking period tests when [teachers] feel such tests are most appropriate." This petition ensued.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982),  
establishes the test for determining negotiability:

[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 403-404]

We decide, only, the arbitrability of the requirement that testing must be conducted on a specified day. On balance this

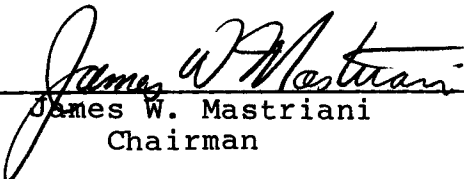
<sup>1/</sup> The grievance does not challenge the directive's statement that sufficient testing is needed and that the test must contain essay questions.

dispute involves the Board's prerogative to make educational policy decisions. See, e.g., Ridgefield Pk. Bd. of Ed., 9 NJPER 670, 671 (¶14292 1983).<sup>2/</sup> While our Supreme Court has stated that school boards would be "well-advised" to solicit teacher input on educational issues, this issue is neither negotiable nor arbitrable. See Dunnellen Bd. of Ed. v. Dunnellen Education Association, 64 N.J. 17 (1973).

ORDER

The Board's request for a permanent restraint of arbitration of whether testing should be conducted on a specified day is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey  
January 16, 1987  
ISSUED: January 16, 1987

<sup>2/</sup> Neither the Board's allegation that the dispute involves the essay testing requirement, nor Local 1060's contention that the directive is objectionable because it requires the teachers to grade exams "on their own time" is borne out by the grievance, the demand for arbitration or the requested relief. We therefore do not decide the arbitrability of those issues.