

P.E.R.C. NO. 98-137

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PERTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-55

PERTH AMBOY ADMINISTRATORS AND  
SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Perth Amboy Board of Education for a restraint of binding arbitration of a grievance filed by the Perth Amboy Administrators and Supervisors Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by issuing directives that there be an administrator in each building until all students have left and that no administrator may leave the building during the workday without the superintendent's permission. The Commission restrains arbitration over the challenge to the requirement that an administrator stay in the building until all students have left or are participating in supervised activities. The Board's request is otherwise denied.

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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PERTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-55

PERTH AMBOY ADMINISTRATORS AND  
SUPERVISORS ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,  
Tischman, Epstein & Gross, P.C. attorneys  
(Philip E. Stern, of counsel and on the brief; Dawn  
Groman, on the brief)

For the Respondent, Robert M. Schwartz, attorney

DECISION

On January 8, 1998, the Perth Amboy Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Perth Amboy Administrators and Supervisors Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by issuing directives that there be an administrator in each building until all students have left and that no administrator may leave the building during the workday without the superintendent's permission.

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

The Association represents a unit of approximately 55 principals and supervisors. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1996 through June 30, 1999. The grievance procedure ends in binding arbitration. Article V, paragraph B states, in part:

All principals, vice principals, directors and supervisors shall report for work twenty (20) minutes before teachers within their buildings (8:30 A.M. for supervisors in the central office) and remain on duty thirty (30) minutes after teachers leave.

On June 28, 1996, Malcolm Sellers, the administrative assistant to the superintendent, wrote a memorandum to all principals and vice-principals. The memorandum stated that beginning on September 1, 1996, building administrators were not to leave their buildings during the workday without permission from the superintendent or administrative assistant. On July 3, Stanley Kluj, Association president, responded that "past practice reveals that building administrators are permitted to leave their buildings during the workday, particularly during their lunch hour." He requested a meeting to discuss the matter so as to avoid a formal grievance.

On July 9, 1996, the superintendent gave these reasons for the directive:

1. Too many parents have come to [the Superintendent's] office with problems because a building administrator was "out to lunch."
2. The length of the workday is clearly defined in the Administrator's Agreement.

3. Few, if any other districts allow building administrators to leave their buildings.
4. The administrative workday is still substantially shorter than the normal eight hour workday in the real world.
5. If a building administrator has had to leave his assignment during the workday for a good reason, I have virtually never denied such a request.

On July 11, 1996, Sellers sent a memorandum to the directors and supervisors. It stated:

Effective September 1 building administrators, principals and vice principals, are not to leave their respective buildings for lunch. The law provides for a "duty free lunch" not the right to leave the building. District supervisors are entitled to a 45 minute "duty free lunch." If you have lunch at Barracks St. or in one of the schools, nothing is required of you. If you go "out to lunch," you must report in person to Mary Serughetti or Nancy Hernandez, who will log the time you leave and return.

The Superintendent has required that the procedure be implemented in response to criticism from the public about administrators and supervisors being seen all over town during the workday. As you can imagine, it is difficult to defend \$80,000 - \$90,000 salaried employees, who do not work eight hours, having time off during the workday.

On May 21, 1997, the superintendent issued the following memorandum to all principals:

I have received complaints from Board members about principals being out of their buildings during the work day.

I want to remind all of you that you are NEVER to leave your building without my permission, except to attend meetings and conduct school-related business. Do not ask me for permission to leave unless it is an absolute emergency.

You can only get permission to leave from me - not Mr. Sellers, or anyone else. If I'm not around, you are out of luck.

On September 8, 1997, the superintendent issued a memorandum reminding principals and vice-principals that they needed permission to leave the school building for activities unrelated to school. He also stated that there was to be an administrator in each building until all students have left the school building and school grounds.

On September 15, 1997, the Association filed a grievance. The grievance asserted that, by contract, principals and vice-principals are required to report for work 20 minutes before teachers and remain until 30 minutes after teachers leave. It further asserted that the past practice has been that principals can leave the building during lunch so long as the building has coverage by another school administrator or designated staff members.

On September 25, 1997, the superintendent upheld the grievance with regard to the reporting time of principals and vice-principals. He denied the grievance concerning the directive to remain in the building during lunch as untimely. He also denied the grievance over the requirement that principals and vice-principals remain on duty until all students, except those in after-school programs, have left the building and grounds, stating that it was a matter of sound educational policy.

On October 9, 1997, the Board upheld the superintendent's position. The Association then demanded arbitration, reiterating its decision to have the directive rescinded to the extent it required administrators to stay in the building during lunch and also until all students have left. This petition ensued.

Our scope of negotiations 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.

Thus, we do not consider the merits of the Association's grievance or the Board's defenses. Nor do we consider the Board's timeliness arguments.<sup>1/</sup>

---

<sup>1/</sup> The Board's brief addresses the negotiability of the directive as it pertains to the time administrators are required to arrive at school. The superintendent sustained the administrators' position on that portion of the grievance. The demand for arbitration focuses on the after-school portion of the directive, even though the pertinent contract provision addresses both arrival and departure times. There is no dispute before us concerning when administrators must report to work.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982),

[A] subject is negotiable between public employer 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 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.

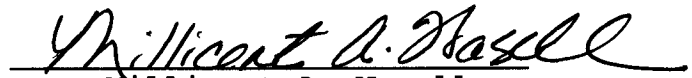
In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 24-25 (App. Div. 1977), holds that "the safety and well-being of the student body and the correlative maintenance of order and efficiency are matters of major educational policy which are management's exclusive prerogative." The directive that there must be an administrator in a building until all students are out of the building or participating in supervised activities is based on those student safety concerns. Thus, arbitration will be restrained over the Association's claim because it could leave students without qualified supervision. The grievance may seek compensation for any extension of the contractual workday.

The Board's sole argument for restraining arbitration over the lunch grievance is that the grievance is untimely. Contractual defenses cannot be considered as part of our scope of negotiations jurisdiction. Ridgefield Park; River Vale Bd. of Ed., P.E.R.C. No. 98-97, 24 NJPER 117 (¶29059 1998). The Board may raise its defense to the arbitrator.

ORDER

The request of the Perth Amboy Board of Education is granted over the challenge to the requirement that an administrator stay in the building until all students have left or are participating in supervised activities. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioners Finn and Klagholz were not present.

DATED: April 30, 1998  
Trenton, New Jersey  
ISSUED: April 30, 1998