

P.E.R.C. NO. 88-118

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP  
BOARD OF EDUCATION

Respondent,

-and-

Docket No. SN-87-49

MIDDLETOWN TOWNSHIP  
EDUCATION ASSOCIATION

Charging Party.

SYNOPSIS

The Public Employment Relations Commission declines a request by the Middletown Township Board of Education to restrain binding arbitration of two grievances filed by the Middletown Township Education Association. The grievances allege that the Board violated the parties' collective negotiations agreement when it increased teacher Joseph Maida's workload. The Commission finds, consistent with its prior cases, that workload is a mandatory subject of negotiations.

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Appearances:

For the Petitioner, Kalac, Newman & Griffin, Esqs.  
(Howard M. Newman, of counsel)

For the Respondent, Oxfeld, Cohen, Blunda, Friedman,  
Levine & Brooks, Esqs. (Mark J. Blunda, of counsel)

DECISION AND ORDER

On February 13, 1987, the Middletown Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination, together with an Order to Show Cause, seeking a permanent restraint of binding arbitration of two grievances filed by the Middletown Township Education Association ("Association"). The grievances allege that the Board violated the parties' collective negotiations agreement when it increased teacher Joseph Maida's workload. The first grievance alleged that the Board increased the number of Maida's teaching periods, and the second alleged that he was required to supervise a student-operated school store while teaching.

On April 12, 1988, Commission Designee Arnold H. Zudick conducted a hearing. The parties examined witnesses, introduced exhibits and argued orally. They filed briefs and agreed to submit this matter directly to the Commission.<sup>1/</sup>

The following facts appear.

The Association is the majority representative of the Board's non-supervisory professional employees. The Board and Association have entered an agreement effective from July 1, 1984 through June 30, 1987 (J-1). Article 19, entitled Teaching Hours and Teaching Load, has 43 separate paragraphs defining the work hours, workloads, preparation periods, and other duties for all categories of unit teaching staff members. Article 19.23a, in particular, provides:

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<sup>1/</sup> After the petition was filed, the original arbitration date was cancelled pending Commission action on the petition. When the arbitration was rescheduled for November 9, 1987, the matter was assigned to Commission Designee Zudick in October 1987, to schedule a show cause hearing. An Order to Show Cause was signed on October 16 and made returnable for October 28, 1987. Pursuant to the Association's request, the Show Cause hearing was rescheduled for November 12, 1987, when the Association agreed to reschedule the arbitration. On November 11, 1987, the Association advised the Commission Designee that the parties had settled the issue and arbitration was unnecessary. In February 1988, however, the Board advised the Commission Designee that the parties had failed to completely settle the matters, and it requested a new show cause hearing. On February 26, 1988, the Commission Designee rescheduled the hearing for March 30, 1988. On March 4, 1988, the Board requested a new date for the show cause hearing and the same was rescheduled for April 12, 1988. The show cause hearing was held on that date, but since the arbitrations had not been rescheduled, the parties agreed to submit this matter directly to the Commission for a final decision.

The daily teaching load in the Senior High Schools and the Junior High Schools shall be no more than five (5) teaching periods, one (1) professional preparation period equal in length to one (1) teaching period and one (1) administrative assignment which shall not exceed the length of one (1) teaching period. A provision is added to permit the administration to schedule, in lieu of the contract administrative assignment provided in Article 19.23a., with the approval of the professional employee and upon written notice to the Association, a professionally related activity such as, but not limited to, tutoring small groups of students in a math, laboratory, reading laboratory, and teacher-student advisor-advisee sessions.

The grievance procedure ends in binding arbitration.

Joseph Maida has been employed by the Board as a teacher for 21 years. Prior to 1986-87, he held two coordinator positions: coordinator of cooperative office education (COE) and coordinator of marketing and distributive education (MDE), for which he received stipends in addition to his regular salary. Both the COE and MDE courses included an instructional period and a work study component. Maida performed the instructional work in a regular teaching period, and was then required to supervise the students as part of his teaching duties outside school premises in the work study portion of the program. One period of supervision of the work study program was equivalent to one teaching period.

The administrative assignments provided for in Article 19.23a. of J-1 included non-teaching assignments such as cafeteria duty and hall duty. In 1985-86, Maida was assigned to supervise the school store. The school store was a room in which students could

purchase certain items. The store was attached to the classroom Maida used in teaching COE and MDE, and there was a glass wall dividing the classroom from the store. The store could be observed from the classroom.

Maida's schedule for 1985-86 was as follows:

First Period - Professional prep period  
Second Period - Work study supervision  
Third Period - Teaching COE  
Fourth Period - Teaching MDE  
Fifth Period - Administrative duty - supervise school store  
Sixth Period - Work study supervision  
Seventh Period - Work study supervision

Maida's 22 minute lunch was included within the seven period work day.

In 1985-86, Maida's five teaching periods were periods two, three, four, six and seven, leaving one period of prep time and one period of administrative duty. That year Maida supervised the school store as a separate period. He sat in the store itself, not in his classroom, to observe the students. The students in the store were not students from Maida's COE or MDE classes, and he occasionally found it necessary to discipline them. Maida's three supervision periods were used to supervise the COE and MDE work study groups.

In 1986-87 Maida was still the MDE coordinator, but was not reappointed as COE coordinator. That year Maida was assigned to teach business law in place of COE, and he was assigned to supervise the store while teaching his MDE class. To supervise the store while teaching MDE, Maida had to observe the store through the glass

wall while teaching in his classroom. He occasionally had to leave his classroom and walk into the store to better supervise the handling of money and to discipline students. Maida did not receive a particular administrative assignment in 1986-87; rather, the Board scheduled his administrative period (either period 6 or 7) as an additional period to supervise his MDE work study group.

Maida's schedule for 1986-87 was as follows:

- First Period - Teaching business law
- Second Period - Professional prep period
- Third Period - Teaching business law
- Fourth Period - Teaching MDE and supervising school store
- Fifth Period - Teaching business law
- Sixth Period - (Administrative duty) supervising work study
- Seventh Period - Supervising work study

Maida's lunch was included within the seven period work day.

On September 17, 1986, the Association filed a grievance (Exhibit C-1A) alleging an increase in Maida's workload. When filed, the grievance challenged the Board's assignment to Maida to teach a third business law course instead of giving him a second supervision period. The Association argued that work study supervision required one and one-half teaching periods per coordinator position. In 1985-86, Maida had two coordinator positions and was assigned three supervision periods. Each supervision period was equivalent to a teaching period. The Association reasoned that since J-1 limited teaching periods to five, and required one administrative duty period, the assignment of one MDE course and three business law courses and one supervision period equaled five periods. It argued that the one MDE work study

component required one and one-half supervision periods, and that since only one supervision period was provided, Maida's workload allegedly was increased since he still had to spend more time supervising the work study group and was also required to teach a third business law course.

The Association's argument at that time assumed that Maida's 1986-87 sixth or seventh period was an administrative duty. When it became clear at hearing that the Board intended the "administrative duty period" to be a second period of work study supervision and that Maida used that period for that purpose, the Association made an alternative argument. It argued that since each period of work study supervision equates to one teaching period, and since the Board assigned Maida four regular teaching assignments (MDE and three business law courses) and two work study supervision assignments equaling a total of six teaching periods, the Board therefore violated Article 19.23a. of J-1 which allows no more than five teaching periods.

On September 30, 1986, the Association filed the second grievance (C-1B). This grievance alleged that the Board increased Maida's workload and violated the contract by assigning him to supervise the school store while teaching MDE. The Association argued that in 1985-86 Maida supervised the school store as his separate administrative duty period, and that requiring him to supervise the store as part of his MDE course increased his workload.

The grievances were denied by the Board and the Association filed for arbitration. With respect to the first grievance, the Board argued that in 1986-87 it only assigned Maida five teaching periods. The Board equated the administrative duty period to a period of supervising work study and thus did not agree that Maida had been assigned to a sixth teaching period. The Board argued that this was merely a change in assignments (assigning Maida to teach business law) and is not negotiable.

With respect to the second grievance, the Board argued that supervising the store was part of Maida's MDE responsibilities and did not increase his workload.

#### ANALYSIS

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction:

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. [Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978)]

We therefore do not consider the contractual merits of the Association's grievances or the Board's defenses. We decide only whether the Board could legally agree to submit these grievances to arbitration.

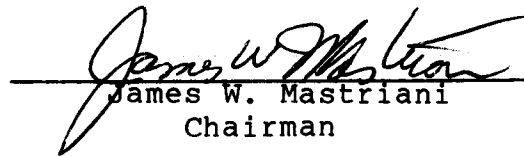


Workload is a mandatory subject of negotiation. Burlington Cty. Coll. Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd App. Div. Dkt. No. A-4836-84T1 (2/6/86); East Newark Bd. of Ed., P.E.R.C. No. 82-123, 8 NJPER 373 (¶13171 1982); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1975), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80). These grievances present workload issues: did the Board assign Maida a sixth teaching period, and did the Board's assignment to supervise the school store while teaching MDE increase his workload? The Association argues that the change in assignments, particularly the additional teaching periods, and the retention of the responsibilities for the school store have increased the amount of work Maida is required to perform. The above precedent permits arbitration of such workload claims. See, e.g., Dover. The grievances do not challenge the Board's right to make assignments; they only allege that the assignments improperly increased the employee's workload.

ORDER

The Middletown Township Board of Education's request for a restraint of arbitration is denied.

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  
April 27, 1988  
ISSUED: April 28, 1988