

P.E.R.C. NO. 92-120

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LODI BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-91-89

LODI EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Lodi Board of Education violated the New Jersey Employer-Employee Relations Act by unilaterally increasing the instructional time and decreasing the preparation time of high school teachers. The Commission orders the Board to negotiate in good faith with the Lodi Education Association over compensation for teachers for 1990-91 and 1991-92 and workload/compensation for 1992-93.

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Appearances:

For the Respondent, William R. Nunno, attorney

For the Charging Party, Klausner, Hunter & Cige, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On October 18, 1990, the Lodi Education Association filed an unfair practice charge against the Lodi Board of Education. The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} by unilaterally increasing the instructional time and decreasing the preparation time of high school teachers.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit...."

On March 11, 1991, a Complaint and Notice of Hearing issued. On March 21, the Board filed its Answer generally denying the substantive allegations in the Complaint.

The parties stipulated a factual record^{2/} and waived their right to a hearing and a hearing examiner's report. They filed a motion and cross-motion for summary judgment which the Chairman referred to the Commission.

VERBATIM STIPULATED FACTS

1. The Lodi Education Association ("Association") is the recognized majority representative, in part, for all non-supervisory certificated teaching personnel employed within the Lodi school district.

2. The Lodi Board of Education ("Board") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, is subject to the Act's provisions and is the Employer of all of the employees affected by these unfair practice charges.

3. The Board and Association are parties to a collective bargaining agreement which covers a time period between July 1, 1990 and June 30, 1993. Annexed hereto as joint exhibits are copies of the 1986-90 collective bargaining agreement, (J-1); and the present collective bargaining agreement covering the period 1990-93, (J-2).

^{2/} Both parties acknowledged that they must meet any burdens of proof based on the stipulated record only.

4. During the 1989-90 school year, non-supervisory certificated teaching personnel employed by the Board at the Lodi High School were responsible for 230 instructional minutes per day, with the exception of individuals referenced in the Master Schedule Assignment Document on pages 1 and 2.

5. The parties agree that the exceptions to the number of instructional minutes referred to in paragraph 4 as listed in the Master Schedule Assignment Document are accurate.

6. The Association amends its unfair practice charges to refer to past practices relating to the assignment of 230 instructional minutes to cover the time period from the 1981-82 school year through the 1989-90 school year.

7. The Board submits that past practices relating to the number of instructional minutes assigned to high school faculty must consider work schedules going back to the 1974-75 school year as referenced by the schedules referred to on page 4 of the Master Schedule Assignment Document marked as Board exhibit R-1 by joint consent. [R-1 consists of only four pages and page four contains the schedule/exceptions for the school year 1981-82 and the school year 1974-75.]

8. All teachers listed in R-1 are or were members of the unit represented by the Association.

9. The "exceptions" referred to during 1981-82; 1982-83; 1983-84; 1984-85; 1985-86; 1986-87; 1987-88; 1988-89 and 1989-90 relate to:

- a. The schedules of supervisory personnel, i.e., Department Heads;
- b. Teachers with teaching responsibilities in more than one school;
- c. Teachers who are assigned on a stipend basis yearbook responsibilities, book room responsibilities and bank responsibilities in lieu of an additional instructional period;
- d. Teachers whose schedule consisted in whole or in part of laboratory periods, e.g., teachers with all biology and chemistry assignments or teachers with mathematics and science laboratory schedules.
- e. Teachers who teach art.
- f. Teachers who teach physical education.
- g. Teachers who teach remedial reading or math.
- h. Teachers who teach business courses.
- i. Teachers who teach supplementary education.

10. There are variances within the categories identified above in paragraph 9.

11. When teaching staff members assigned to the High School returned to teach in the Lodi School District as of September 1990 they were advised that the Board had implemented a nine period school day and had increased the instructional time assigned to each non-supervisory teaching staff member at the High School from 230 minutes to 246 minutes per day, i.e., total increase in pupil contact time of 16 minutes per day.

12. The 230 minutes represented 5 teaching periods of 46 minutes each. The 246 minutes represented 6 periods of 41 minutes each.^{3/}

13. Prior to 1990-91 school year, the schedule consisted of an 8 period school day, consisting of 7 teaching periods and 1 lunch period. As of the 1990-91 school year, the schedule consisted of a 9 period school day, consisting of 8 teaching periods and 1 lunch period.

14. The number of duty free lunch minutes remained the same before and after the 1990-91 school year.

15. Teaching staff members at the High School were provided with 46 minutes of prep time [per day] during the 1989-90 school year. Teaching staff members at the High School were provided with 45 minutes of prep time [per day] for previous school years under contention. Teaching staff at the High School were provided with 41 minutes of prep time [per day] for 1990-91 school year.

16. At no time did the Board negotiate any changes in the instructional time or prep time assigned to non-supervisory certificated teaching staff members at the Lodi High School with the Association.

17. The Association and Board agree that the 1986-90 agreement at Article VII A. states as follows:

^{3/} Because periods were reduced from 46 to 41 minutes, five minutes per day of non-instructional duty time was converted to instructional time. The Association has not specifically addressed that aspect of the change.

2. Length of the Day The arrival and departure time for all teachers shall be designated in Schedule "E", however, their total in-school workday shall consist of not more than five (5) hours and forty-five (45) minutes for grades K-6, not more than six (6) hours and thirty (30) minutes for secondary schools, in addition to a duty-free lunch period as guaranteed to teachers under Section C of this Article. On Fridays and the day immediately preceding Holidays, teachers may leave their buildings no sooner than five (5) minutes after student dismissal.

Additionally, Schedule E for High School indicates the school day is 8 a.m. to 2:50 p.m. The parties also agree that the 1990-93 agreement, (J-2), at Article VII, Section A, paragraph 2 maintains the same length of school day.

18. The parties agree that the length of the school day has not changed.

19. Article X Section A, "Intent" of both the 1986-90 and 1990-93 agreements indicates that the Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

B. Application

1. List of nonteaching duties - Teachers shall not be required to perform the following duties:

- a. Supervision of Cafeteria
- b. Supervision of Playgrounds
- c. Maintenance of individual attendance registers

20. The reasons for the additional instructional period are as follows:

1. The State of New Jersey increased its academic requirements for High School graduation.

a. in 1988-89, they added World Culture as a history requirement;

b. in 1989-90, they added a second science requirement;

c. and in 1990-91, they added an additional year of mathematics from 2 units to 3 units.

2. The State raised its requirements for the total number of credits yesterday for High School graduation.

3. Certain students indicated that it was difficult financially for them to attend summer school and the nine period day permitted the doubling of courses, i.e., English 3 and 4, within the schedule.

4. The nine period schedule permitted students to enroll in additional elective offerings benefiting both college bound seniors and students in need of remediation.

21. All teachers grades K-12 employed by the Board are in the same bargaining unit and adhere to the same agreements, introduced into evidence as J-1 and J-2.

22. Despite the increase in pupil contact time, the Lodi High School teachers continue to have an average of 110 minutes more preparation time than elementary school teachers grades 1 through 3; 100 minutes more than teachers grades 4 through 6; 5 minutes less than 7-8; and 160 minutes more than Roosevelt school, a special education facility. The preparation time of high school teachers, grades 9 through 12 in 1989-90, was 230 minutes per week. [The preparation time of high school teachers was reduced to 205 minutes per week for the 1990-91 school year]. The parties agree to have

the document titled "Prep Time Per Week", dated June 10, 1991, admitted into evidence, marked as R-2.

ADDITIONAL STIPULATED FACTS

23. A reserved period is synonymous with a preparation period.

24. A duty period represents a period of time in which a teacher is assigned supervisory duties such as lunch room supervision and hall duty during which time a teacher has general responsibilities to insure order within the particular area involved.

ANALYSIS

The parties have stipulated that the Board increased instructional time for high school teachers by 16 minutes per day and reduced preparation time by 5 minutes per day. The Board, however, argues that it acted in compliance with a collective negotiations agreement that does not limit its discretion to set the number of teaching periods within the contractual workday. It further argues that its decision to restructure teaching periods without increasing the workday was not mandatorily negotiable.

The Association claims that the Board changed past practices relating to the maximum amount of instructional time and minimum amount of preparation time and failed to prove that the Association clearly and unmistakably waived its right to negotiate before the changes were made. The Association argues that even if we sustain the Board's claim that it had a right to implement the new schedule, the Board nevertheless violated the Act by refusing to negotiate over additional compensation for the increased instructional time.

The Board had a managerial prerogative to change from an eight to a nine period school schedule. That change achieved a number of educational goals stipulated by the parties. But that does not mean that the Board had a managerial right to insist that this change affecting preparation and instructional time be effectuated without negotiations concerning compensation. We have long held that the right to increase instructional time for students does not eliminate the need to negotiate over increases in workload for teachers. See, e.g., Buena Reg. Bd. of Ed., P.E.R.C. No. 79-63, 5 NJPER 123 (¶10072 1979).^{4/}

Because teacher workload is mandatorily negotiable, a school board must negotiate before substituting instructional time for non-instructional and preparation time. N.J.S.A. 34:13A-5.3; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); 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).

4/ Ramapo-Indian Hills Ed. Ass'n v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980), relied on by the Board, does not support its claim that the right to increase pupil contact time is a managerial prerogative. Under the particular facts of that case, the Court held that a non-negotiable decision to create a new extracurricular position could not be separated from the hours required to perform the duties associated with the new position. The Court noted, however, that a board does not have the power to require teachers to work during their free time or to increase the number of pupil contact hours unilaterally. The absence of that power does not interfere with the constitutional duty to ensure a thorough and efficient education. Id. at 45.

But a board will not be found to have violated its negotiations obligation if an increase in pupil contact time is authorized by the collective negotiations agreement. Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991). A contractual waiver of statutory rights must be clearly and unmistakably established. Red Bank.

We reject the Board's argument that the parties' collective negotiations agreement clearly authorized an uncompensated increase in instructional time and reduction in preparation time. The contract is silent on these issues. Therefore the Association had no contractual right to prohibit these changes. But that does not mean that the Board had a contractual right to make the changes. It merely means that the parties have not contractually allocated control over the subjects to one side or the other, and the parties must instead negotiate over any proposed changes. Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366, 368 n.3 (¶16129 1985).

The Board relies on Glen Ridge Bd. of Ed., P.E.R.C. No. 90-33, 15 NJPER 619 (¶20258 1989). There, the contract set the workday, provided for a duty-free lunch period, and recognized a goal of equal preparation time at all schools. The increase in pupil contact time for elementary teachers was within the confines of the workday and did not affect the duty-free lunch. Elementary teachers continued to have more preparation time than other teachers. Although the increase in pupil contact time for elementary teachers came from a reduction in unassigned time, they

retained more unassigned time than teachers in the middle and high school. We found that given the parties' total understanding and practice concerning teacher workload, including the agreement to try to equalize preparation time, the evidence did not warrant finding an unfair practice. The present case is factually distinguishable because the parties have not contractually agreed to give the Board the right to adjust the amount of instructional or preparation time.

Other cases where we found a contractual waiver are also distinguishable. In Bound Brook Bd. of Ed., P.E.R.C. No. 83-11, 8 NJPER 439 (¶13207 1982), the Board did not exceed the contractual workday, increase the number of teaching periods, or intrude upon the contractual preparation and lunch periods. In Randolph Tp. Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980), the increase did not exceed the contractual workday or teaching load. In Pascack Valley Reg. H.S. Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554 (¶11280 1980), the change did not offend contractual provisions concerning the length of the school day, a duty-free period and planning period, and the normal teaching load. In all of these cases, the contracts set the amount of work time within the contractual workday. Here, although the parties have agreed by contract to the length of the workday, they have not agreed to the amount of teaching, preparation, duty or duty-free time within that workday. The contract nowhere indicates that the parties contemplated that the Board would have the right to make changes in these amounts unilaterally. The Board is not contractually bound to maintain the

status quo or some set contractual amount, but it is required to negotiate before implementing uncompensated increases in instructional time and uncompensated decreases in preparation time.^{5/} Its failure to do so violated subsections 5.4(a)(1) and (5). We therefore order the Board to negotiate in good faith over compensation for teachers for 1990-91 and 1991-92 and workload/compensation for 1992-93. We expect the parties to complete negotiations over these issues before the beginning of the next school year.

ORDER

The Lodi Board of Education is ordered to:

1. Cease and desist from:

A. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally increasing instructional time and reducing preparation time for high school teachers represented by the Lodi Education Association.

B. Failing to negotiate in good faith with the Association before implementing uncompensated increases in instructional time and uncompensated decreases in preparation time for high school teachers.

^{5/} The Board also relies on Caldwell-W. Caldwell Ed. Ass'n v. Caldwell-W. Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981). There, the increase in teaching obligations for CORE teachers kept them within the established range for all other teachers.

2. Take this action:

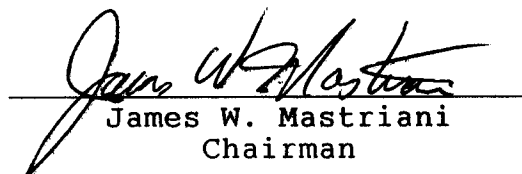
A. Negotiate in good faith with the Association over compensation for teachers for 1990-91 and 1991-92 and workload/compensation for the 1992-93 school year.

B. Negotiate in good faith with the Association before implementing uncompensated increases in instructional time and uncompensated decreases in preparation time for high school teachers.

C. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

D. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

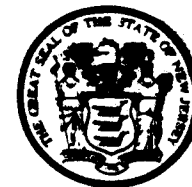
DATED: June 25, 1992
Trenton, New Jersey
ISSUED: June 26, 1992



NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE



PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally increasing instructional time and reducing preparation time for high school teachers represented by the Lodi Education Association.

WE WILL cease and desist from failing to negotiate in good faith with the Association before implementing uncompensated increases in instructional time and uncompensated decreases in preparation time for high school teachers.

WE WILL negotiate in good faith with the Association over compensation for teachers for 1990-91 and 1991-92 and workload/compensation for the 1992-93 school year.

WE WILL negotiate in good faith with the Association before implementing uncompensated increases in instructional time and uncompensated decreases in preparation time for high school teachers.

Docket No. CO-H-91-89

LODI BOARD OF EDUCATION

(Public Employer)

Dated: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372