

P.E.R.C. NO. 82-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST NEWARK BOARD OF EDUCATION,
Petitioner,

-and-

Docket No. SN-82-51

EAST NEWARK EDUCATION ASSOCIA-
TION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance which the East Newark Education Association filed against the East Newark Board of Education. The Board allegedly violated its collective agreement with the Association when it increased the teaching time of a kindergarten teacher and decreased her preparation time. This change resulted from the Board's decision to reduce the number of times per week that the students would have art, physical education and music classes, classes not taught by the regular kindergarten teacher.

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Appearances:

For the Petitioner, Schwartz & Pisano, Esqs.
(Nathanya G. Simon, of Counsel)

For the Respondent, Gerald Lange, Field Representative
New Jersey Education Association

DECISION AND ORDER

On January 20, 1982, the East Newark Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a matter in dispute between the Board and the East Newark Education Association (the "Association") is within the scope of collective negotiations. The instant dispute concerns a grievance which the Association seeks to submit to binding arbitration. The Board has objected to arbitration on the basis that the issue in dispute is a managerial prerogative and thus is neither negotiable nor arbitrable. Briefs were submitted by the parties by March 25, 1982.

The dispute herein derives from the Board's decision to change the format of the kindergarten program. Prior to the 1981-82 school year, the kindergarten was operated on a split-session basis: one group of students attended the morning session; another

group of students attended the afternoon session. The kindergarten teacher taught both sessions and thus worked a full day.

Both kindergarten sessions were given art, music and physical education classes by specialist teachers during which times the kindergarten teacher was provided with weekly preparation time. Commencing in the 1981-82 school year, the Board decided to change the kindergarten format by making it a full day for students and by reducing the number of times per week that the students would have art, physical education and music classes.

A grievance was filed alleging that by this action of the Board, the preparation time of the kindergarten teacher had been reduced and teaching time had been increased. The net result is alleged to be an increase in the workload of the kindergarten teacher.

The Board contends that the decision to establish an all-day kindergarten and the assignment of specialist teachers are managerial prerogatives and therefore are not subject to negotiations or arbitration. The Board argues that the basis for its decision to change the kindergarten format is to provide a more thorough and efficient system of education. The Board argues that where, as here, the dominant issue in dispute is an educational goal, there is no obligation to negotiate the issue or its impact. The Board contends that the educational policy decision in this matter is inescapably intertwined with its impact -- that the decision to change the kindergarten format and the implementation thereof are inseparable from the resultant workload increase.

The Association specifically does not contest, nor in our view could they, the Board's change of the kindergarten format; rather, the subject of the grievance relates to additional workload for unit members.

The Association contends that the Board's action in reducing the number of preparation periods of the kindergarten teacher and its concomitant increase in the number of instructional periods for that teacher amounts to an increase in the teacher's workload.

The Association contends that workload is a term and condition of employment. More specifically, the Association argues that the assignment of additional instructional duties within the extant school day is a mandatory subject of negotiations.

The Supreme Court has defined negotiable terms and conditions of employment to be "...those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent managerial prerogatives pertaining to the determination of governmental policy." State v. State Supervisory Employees Assn, 78 N.J. 54, 67 (1978). (citations omitted)

In In re Newark Board of Education and Newark Teachers Union, Loc. #481, P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Docket No. A-2060-78 (2/26/80), the Commission determined that it had been clearly established that preparation time and teacher work load were mandatory subjects for collective

negotiations.^{1/} In affirming the Commission, the Appellate Division stated:

Applying this definition (State Supervisory at 67), New Jersey courts have consistently found that a teacher's workload is a term and condition of employment which is mandatorily negotiable, even though the change in workload was caused by a change in educational policy. (citations omitted)
Newark, supra, App. Div. Docket No. A-2050-78 (2/26/80) pg. 5.

In Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976), the court held that the Board's unilateral assignment of an additional working period in substitution for a preparation period affected terms and conditions of employment and therefore was negotiable and arbitrable.

In In re Dover Board of Education and Dover Education Association, P.E.R.C. No. 81-110, 7 NJPER 101 (¶12071 1981), aff'd No. A-3380-80T2 (3/16/82), the Board decided to change the format of the school day from 7 periods to 8 periods. This change resulted in a net increase of 35 minutes per day in teacher-pupil contact time. There was no change in the length of the overall school day. The Commission determined, in agreement with its Hearing Examiner, that the Board's decision which resulted in certain teachers being unilaterally changed from a duty period to an additional instructional period, amounted to an increase in workload; that increased workload was found to be mandatorily negotiable.^{2/}

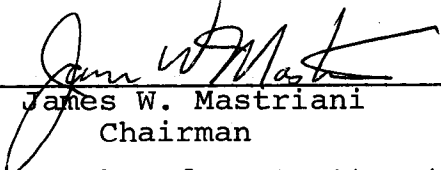
1/ Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), Dunellen Ed. Assn. v. Dunellen Bd. of Ed., 64 N.J. 17 (1973), Burlington Co. Coll. Fac. Assn. v. Bd. of Trustees, 64 N.J. 10 (1973).
2/ Accord, Board of Education of the Borough of Fair Lawn v. Fair Lawn Ed. Assn., P.E.R.C. No. 79-44, 5 NJPER 68 (¶10032 1979), aff'd App. Div. Docket No. A-2054-78 (12/10/79) and In re Wanaque Borough District Bd. of Education, P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981).

In the instant matter, the Board has changed the kindergarten teacher's work day by eliminating several periods of preparation time and substituting for them additional periods of instructional time. The Board's action herein affects workload, which is a term and condition of employment. Pursuant to prior Commission and court decision which have addressed similar circumstances, workload is a mandatory subject for negotiations. Accordingly, the Board's request for a permanent restraint of arbitration with regard to this grievance is denied.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the East Newark Board of Education's request for a permanent restraint of arbitration with regard to the grievance concerning the kindergarten teacher's increased pupil contact time and increased workload is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Hartnett voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Suskin was not present at the time of the vote. Commissioner Graves was not in attendance.

DATED: Trenton, New Jersey
June 3, 1982
ISSUED: June 4, 1982