

P.E.R.C. No. 78-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINCOLN PARK EDUCATION ASSOCIATION,

Petitioner,

-and-

BOARD OF EDUCATION OF LINCOLN PARK,

Respondent.

Docket No. SN-78-26

SYNOPSIS

In a Scope of Negotiations proceeding, initiated by the Education Association, the Commission determines that the decision of the Board of Education to establish a remedial reading program and to restructure the school day to accommodate this program is a permissive but not a mandatory subject of negotiations. However, the Commission concludes that the impact of that decision on teachers' terms and conditions of employment, including the number of teaching periods and the amount of pupil contact time and other workload factors, are within the scope of collective negotiations and are mandatorily negotiable.

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Appearances:

For the Petitioner, Goldberg & Simon, Esqs.
(Gerald M. Goldberg, Of Counsel, Sheldon H.
Pincus, On the Brief).

For the Respondent, Hoffmann, Fiorello & Hallock,
Esqs. (Joseph A. Hallock, Esq., On the Brief).

DECISION AND ORDER

On February 21, 1978, the Lincoln Park Education Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute are within the scope of collective negotiations pursuant to N.J.S.A. 34:13A-5.4(d).

The Association and the Lincoln Park Board of Education (the "Board") are parties to a collective negotiations agreement covering the period from September 1, 1976 to August 31, 1978. During the course of collective negotiations for a successor agreement, the Board submitted the following statement to the Association's negotiating team:

An eight period day will be implemented at Chapel Hill for the 7th and 8th grades beginning September 1978.

The day will consist of eight 41 minute periods with a 25 minute lunch period. All teachers will have six periods of pupil contact, one preparation period, and one duty period.

Essentially the Board maintains that the decisions set forth in the above declaration relate to managerial prerogatives, i.e., the decision of the Board to introduce a reading program in the Chapel Hill Middle School to remedy reading deficiencies and to change the format of the school day from a seven period day to an eight period day to accommodate the new program, that are not subject to required negotiations. The Board does stipulate that the impact of the aforementioned statement on terms and conditions of employment is mandatorily negotiable. The Association maintains that the totality of the matters covered in the Board's statement are subject to mandatory negotiations inasmuch as that declaration directly affects teacher workload, pupil contact time, preparation time, and the like. This Scope Petition was filed by the Association to obtain a decision from the Commission as to the negotiability of this statement relating to the Chapel Hill School.

Briefs have been submitted by both sides, including a reply brief from the Association, which was received by the Commission on April 25, 1978. The Board initially requested an evidentiary hearing in correspondence dated April 24, 1978, but formally withdrew its request in a letter dated June 7, 1978.

An examination of the parties' submissions reveals that the introduction of a new reading program in the Chapel Hill Middle School was the underlying reason for the Board's determination to change the format of the school day. The Board determined that

the best method of implementing this reading program at this school would be to restructure the school day in order to accommodate an additional teaching period within the parameters of the existing school day, in part by reducing the number of minutes allocated per teaching period. It is uncontraverted that the restructuring of the school day would not result in changes concerning the starting or termination time of the school day. It is also uncontroverted that the implementation of the Board's policy declaration would increase the total of number of periods in the school day from seven to eight.

We have carefully considered the parties' submissions in this matter. We agree with many of the statements made by each party. The Board asserts the right, without negotiations and as a matter of managerial prerogative, to introduce a reading program in the Chapel Hill School in an effort to remedy reading deficiencies and to change the structure of the school day to accommodate the reading program. It concedes the negotiability of the effect of this decision on teachers' terms and conditions of employment. To that extent, the Board's position is correct.^{1/}

Similarly, the Association is correct when it points out that the Board's proposal would, if implemented, result, among

^{1/} One additional contention of the Board requires some comment. The Board states in its brief that even if the Board's changes were implemented at the Chapel Hill School, the teachers there would still be responsible for less pupil contact time than other teachers in the district employed at other schools, and would still have one more preparation period than other teachers within the school system. We agree with the Association that this point is irrelevant. The fact that some teachers may teach more than others does not mean that the amount of teaching required of those teachers who teach less than others is not also mandatorily negotiable.

other things, in an increase in pupil contact time for the teachers, a slight decrease in preparation time, and an increase in the number of teaching periods. These matters relate to workload and, as we have held, with judicial affirmation, are mandatorily negotiable.^{2/} At the same time, the Association also concedes that decisions relating to the amount of instructional time received by a pupil per day is only permissively negotiable although it asserts that the amount of pupil contact time that a teacher has is a term and condition of employment which is mandatorily negotiable. Again, we have no quarrel with that position.

It appears to us that the instant dispute stems from two factors: first, both parties have viewed the Board's statement as an indivisible whole and, second, the Board views its statement as going to the students' school day whereas the Association is convinced that the Board's statement, issued during negotiations, is directed at teachers.

Properly viewed, we have little difficulty in determining the negotiability of this matter because it contains nothing that we have not previously decided. It is simply necessary to clarify the perspective from which it is analyzed.

^{2/} Byram Board of Education and Byram Twp. Education Ass'n., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd as modified, 152 N.J. Super. 12 (App. Div. 1977); see also Englewood Board of Education v. Englewood Teachers' Association, 64 N.J. 1 (1973); Burlington County College Faculty Association v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); In re Middlesex County College Board of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (4023, 1977); In re State of New Jersey (Stockton State College), P.E.R.C. No. 77-31, 3 NJPER 62, and In re Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977), Motion for Reconsideration, P.E.R.C. No. 78-37, 4 NJPER 6 (4003, 1978), Appeal Pending, (App. Div. Docket No. A-1648-77).

As stated, it is the prerogative of the Board, based upon its exercise of educational judgment and discretion, to decide to establish a reading program and to restructure the students' school day in order to implement that program. However, applying our so-called "decision/impact dichotomy" to this issue, any effect of that decision on teachers' terms and conditions of employment is mandatorily negotiable. Here the Board seeks to increase the number of teaching periods per teacher per day from five to six. This it cannot do without prior negotiations.^{3/} The Board's decision as to the reading program and the number of student periods does not dictate the number of teaching periods for faculty members.

We determine, therefore, consistent with the above discussion, that the decision of the Board to establish a remedial reading program and to restructure the school day to accommodate this program is a permissive but not a mandatory subject of negotiations. However, the impact of that decision on teachers' terms and conditions of employment including the number of teacher periods of pupil contact and the amount of pupil contact time and other workload factors are within the required scope of collective negotiations and are mandatorily negotiable.

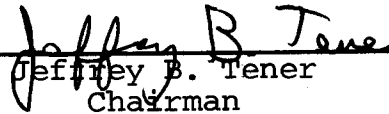
ORDER

IT IS HEREBY ORDERED that the Lincoln Park Education Association refrain from insisting to the point of impasse upon

3/ In re Byram Bd. of Ed., supra.

the inclusion in the parties' successor agreement of a provision relating to the establishment of a reading program or the structure of the students' day. IT IS FURTHER ORDERED that the Lincoln Park Board of Education negotiate in good faith, upon demand, with the Association regarding the number of teaching periods, the amount of pupil contact and other workload factors as well as any other changes in terms and conditions of employment associated with the Board's decision to establish a reading program or to restructure the school day.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels voted for this decision. None opposed. Commissioner Schwartz abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978