P.E.R.C. NO. 80-162

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY VOCATIONAL
SCHOOL BOARD OF EDUCATION,

Petitioner,

Docket No. SN-80-102

- and -

CAMDEN VOCATIONAL ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination rendered by the Chairman, the Chairman concludes that the assignment or work-load increase of a loss of preparation period, the assignment to supervise in-school suspensions, and the assignment of lavatory duty, if as a direct result of a reduction in force, is neither negotiable nor arbitrable.

But workload increases, as a result of any of the above assignments not directly related to the reduction in force, are negotiable.

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Appearances:

For the Petitioner, Davis & Reberkenney, Esqs.
(Kenneth D. Roth, of Counsel)

For the Respondent, Selikoff & Cohen, P.A.
(John E. Collins, of Counsel)

DECISION AND ORDER

On February 20, 1980 a Petition for Scope of Negotiations Determination was filed by the Camden County Vocational School Board of Education (the "Board") with the Public Employment Relations Commission ("the Commission") seeking a determination as to whether a matter in dispute between the Board and the Camden Vocational Association (the "Association") is within the scope of collective negotiations. Briefs were submitted by both parties, the last of which was received on April 30, 1980.

The Board indicated in its scope petition and brief that the instant dispute arose with respect to certain matters that the Association sought to process pursuant to a negotiated grievance procedure in which the Association filed a request for the institution of arbitration proceedings. The Board in filing this scope petition seeks an order restraining arbitration.

The relevant issues herein concern grievances filed by the Association over three separate incidents, all of which the Association alleges relate to Article IV(B)(1) of the parties' collective agreement which provides as follows:

> Academic subject teachers shall have two (2) preparation periods per day. Every effort shall be made to grant related subject teachers two (2) preparation periods per day.

The first incident relates to the elimination of one of the two daily preparation periods for the 1979-80 school year. The Board had a reduction in force of 13 professional staff members effective June 30, 1979. Beginning with the 1979-80 school year, the Board, allegedly because of the reduction in force and in an effort to keep from increasing the size of classes, elected to reduce the number of preparation periods per teacher. The Association filed a grievance alleging a violation of Article IV(B)(1) and seeking a return to two preparation periods per day. The Board denied the grievance, stating that the elimination of the preparation period resulted from the reduction in force.

The second incident relates to a Board decision made prior to the 1979-80 school year to assign certain teachers to supervise in-school suspensions. Those affected teachers lost at least one preparation period a day as provided in Article IV(B)(1) of the parties' collective agreement. The Board asserted that the need to assign teachers to perform in-school supervision which resulted in the loss of one preparation period was related to its reduction in force and was therefore non-negotiable. The Association claimed, however, that the Board's decision to assign teachers to perform

this duty was a new assignment and not a direct result of the reduction in force, and therefore a violation of Article IV(B)(1) of the collective agreement. The Association sought reimbursement for performing the duties or elimination of the duties.

The third incident relates to a Board decision beginning in the 1979-80 school year which directed teachers during their preparation periods to perform "lavatory" duty each day. This consisted of stepping into the lavatories next to the faculty lounge to insure that no vandalism or other improper activity was taking place. The Board asserted that this assignment did not take the place of a preparation period but was to be performed when going to and returning from the faculty lounge during the preparation period. The Board claimed that this duty was a managerial prerogative and that the decision and its impact were non-negotiable. The Association argued that the decision to assign lavatory duty and the impact were negotiable, and it further argued that lavatory duty diminished its contractually provided preparation time which therefore violated Article IV(B)(1) of the parties agreement. The Association sought reimbursement for performing the duty and elimination of the duty thereafter.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission and/or the judiciary.

The first incident -- the loss of a preparation period because of a reduction in force -- is controlled by In re Maywood Board of Ed., 168 N.J. Super. 45, certif. den. 81 N.J. 292 (1979). In that matter the Appellate Division held that since the decision to reduce teaching personnel is a managerial prerogative, then the impact of that decision -- such as increased workload for the remaining teachers -- is non-negotiable. Therefore, to the extent that the Board has utilized remaining teachers to perform work previously performed by those teachers who were reduced in force, the impact of that Board decision, i.e. the loss of one preparation period, is non-negotiable and non-arbitrable.

The Association argues that the Board has not shown that the reduction in force was the direct and proximate cause of the increased workload and the loss of the preparation period. Therefore, the Association argues that the increase in teaching periods is a mandatory subject for negotiations and was a violation of Article IV(B)(1) of the collective agreement. However, the Commission and the Supreme Court have stated that in a scope matter the Commission will only decide whether the subject matter in dispute is within the scope of collective negotiations, and it will not decide the facts, or whether contractual defenses exist since those are questions for an arbitrator and/or the courts.[1/] Consequently, the undersigned finds that if the loss of the preparation

1/ Ridgefield Park Board of Ed v. Ridgefield Park Ed Assn, 78 N.J. 144, 154 (1978); In re Hillside Bd of Ed, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

period is directly related to the reduction in force, then the impact of that decision in non-negotiable.

The Commission and the courts have held, however, that workload increases that are not attributable to a reduction in force, and are otherwise negotiable, are mandatory subjects for negotiations.[2/] Thus, to the extent that the loss of a preparation period was not directly related to the Board's reduction in force, it involved a direct alteration of a mandatorily negotiable term and condition of employment.

The second incident -- the assignment of teachers to supervise in-school supensions -- is also controlled by Maywood, supra, and Weehawken, supra. If the assignment of teachers to the in-school suspensions, resulting in the loss of a preparation period, was directly related to the Board's reduction in force, then the workload increase was non-negotiable. But if the assignment of teachers to the in-school suspension program was a new duty and not directly related to the reduction in force, then the increase in workload, but not the assignment itself,[3/] was mandatorily

2/ In re Weehawken Bd of Ed, P.E.R.C. No. 80-91, 6 NJPER (¶11026 motion for reconsideration denied P.E.R.C. No. 80-119, 6 NJPER ___ (¶_____ 1980) and Newark Bd of Ed and Newark Teachers Union, Loc. #481, AFT, AFL-CIO, P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1979), P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), affmd App. Div. Docket No. A-2060-78 (2/26/80).

3/ The Commission has held in In re Weehawken Bd of Ed, P.E.R.C. No. 80-112, 6 NJPER ___ (¶_____ 1980), motion for reconsideration denied P.E.R.C. No. 80-129, 6 NJPER ___ (¶_____ 1980) and In re Elizabeth Bd of Ed, P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979) that where a demand for arbitration has been made the Commission must focus upon the issue sought to be arbitrated. In the instant matter the Association sought reimbursement for the in-school suspension duty and elimination of that duty. Since the duty is similar to cafeteria or lunchroom supervisory duty as set forth in Weehawken, P.E.R.C. No. 80-112, supra, (continued)

negotiable and arbitable and may have violated Article IV(B)(1) of the agreement. Again, since the Commission in a scope matter will not decide whether there is any connection between the reduction in force and the instant assignment, that issue must be submitted to an arbitrator or the courts for determination.

The third incident -- the assignment of teachers to lavatory duty -- is controlled by In re Weehawken Bd of Ed, P.E.R.C. No. 80-112, supra. In that matter the Commission held that the assignment of teachers to lunchroom/cafeteria and yard duties was a managerial prerogative and non-negotiable. The assignment of teachers in this matter to lavatory duty is of a similar nature and the assignment therefore is non-negotaible. However, the balancing test set forth in Woodstown-Pilesgrove, supra does not prevent the Association from seeking to negotiate over the workload increase occasioned by the assignment. As discussed with the other incidents herein, to the extent that lavatory duty is a direct resultof the Board's reduction in force, the assignment and workload increase is non-negotiable and non-arbitrable. But any workload increase resulting from lavatory duty unrelated to the RIF is negotiable and arbitrable.

ORDER

Based upon the above, it is hereby determined that Article IV(B)(1) is a mandatorily negotiable term and condition of

3/ (continued)
the assignment to that duty is a managerial prerogative. But pursuant to Bd of Ed of Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Reg. Ed Assn, 81 N.J. 582 (1980), certain workload increases may be negotiated. Therefore, in the instant matter the Association cannot appropriately challenge the Board's decision to assign in-school supervision duty, but the workload increase is mandatorily negotiable and disputes concerning same may be submitted to arbitration.

employment which is arbitrable if otherwise arbitrable under the parties' agreement. However, any loss of or intrusions upon preparation periods which is a direct result of the Board's reduction in force is neither negotiable nor arbitrable.

The Board's request for a permanent restraint of arbitration is hereby denied. The arbitrator is directed to proceed in a fashion consistent herewith.

By order of the Commission

BY: Jeffrey B. Tener
JEFFREY B. TENER
Chairman

DATED: Trenton, New Jersey
June 30, 1980