

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEEHAWKEN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-80-40

WEEHAWKEN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, grants the Board's request for a permanent restraint of arbitration. The Chairman concluded, consistent with prior Commission and judicial decisions, that the assignment of teachers to cafeteria/lunchroom and school yard assignments is not negotiable or arbitrable.

The Chairman also reiterates the Commission's position that in rendering scope determinations where a demand for arbitration has been made, the focus of the Commission's examination must be upon the issue(s) which the grievant is seeking to submit to arbitration. Where the contractual provision(s) in question relate to managerial polity the arbitration will be restrained.

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Appearances:

For the Petitioner, Krieger and Chodash, Esqs.
(Brian N. Flynn, of Counsel)

For the Respondent, Goldberg and Simon, Esqs.
(Louis P. Bucceri, of Counsel)

DECISION AND ORDER

On November 5, 1979, the Weehawken Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Weehawken Education Association ("Association") are within the scope of collective negotiations under the New Jersey Employer-Employee Relations Act ("Act"). Briefs were submitted by both parties, the last of which was received on February 26, 1980.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the undersigned the authority to issue scope decisions in cases involving issues previously decided by the Commission and/or in the State Judiciary, thereby permitting an expeditious disposition of these matters.

At issue herein is the grievability/arbitrability of the

Board's action in assigning teachers to cafeteria/lunchroom and school yard supervision. The Association's grievance alleged a violation by the Board of Articles VI and XXVI(E) and (F) of the parties' collective agreement.^{1/} On November 5, 1979, the undersigned issued an order temporarily restraining the arbitration herein.

In its brief filed on January 14, 1980, the Board, citing numerous cases, argued that its assignment of teachers to yard and lunchroom duty was needed to insure the safety and welfare of students and was a managerial decision that was neither grievable nor arbitrable. The Board further argued that the Association's grievance did not allege an increase in workload or pupil contact time or that a violation of the contractual 30 minute duty free lunch period had been committed. The Board concluded that the Association seeks to arbitrate only the instant teacher assignments.

I/ Those articles provide: Article VI NON-TEACHING DUTIES

The Board shall provide for a central register in each elementary school in addition to those presently existing in the secondary school and the Junior high school. The Board of Education agrees to hire aides for each elementary (K-8) school to relieve the teachers of Playground and/or lunch duty. It is understood that the assigned teacher must be on call in the building during this period of time.

ARTICLE XXVI

E. If any provision of the Agreement or any application of the Agreement to any employee or group of employees is held to be contrary to law then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

F. Any individual contract between the Board and an individual employee, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract contains any language inconsistent with this Agreement, this Agreement, during its duration, shall be controlling.

The Association, in its brief filed on February 26, 1980, acknowledged that it seeks to arbitrate the Board's decision to assign teachers to yard and lunchroom duty, and that as a remedy it seeks the return of terms and conditions to previous levels as well as compensation for the alteration in teacher hours. The bulk of its brief argues that its members' workload and hours have been increased. Cases are cited which point to the negotiability of these issues.

The Association's arguments miss the mark. The negotiability of workload and hours is not in dispute in this case nor in doubt in our minds. But the grievance filed by the Association does not contend a violation of contractual provisions relating to workload and/or hours. The Commission, in In re Elizabeth Board of Education, P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979), held that in rendering a scope determination in a matter where a demand for arbitration has been made, the Commission must focus its examination upon the issue(s) the grievant seeks to submit to arbitration. If the contractual provision(s) do not pertain to terms and conditions of employment, but rather involve matters of educational policy, then the arbitration will be permanently restrained.^{2/}

The contractual provisions cited by the Association in its grievance, as well as the instant scope petition, have been analyzed and together show that the issue herein concerns the Board's assignment of teachers to yard and lunchroom duties. The grievance does

^{2/} See also, In re West Paterson Board of Education, P.E.R.C. No. 80-17, 5 NJPER 377 (¶10192 1979).

not allege and presumably the Association does not seek to arbitrate any increase in workload or any change in the duty-free lunch period.^{3/}

In earlier decisions, the Commission and the judiciary have held that the assignment of teachers to cafeteria/lunchroom supervision is a managerial decision and non-negotiable. In re Plainfield Board of Education, P.E.R.C. No. 80-42, 5 NJPER 418 (¶10219 1979); Long Branch Education Association v. Board of Education of Long Branch, 150 N.J. Super. 262, aff'd 73 N.J. 461 (1977). The assignment to yard duty in this matter is indistinguishable from a cafeteria assignment.

Having previously found that the assignment of teachers to lunchroom/cafeteria (and yard) duties is one of managerial prerogative and non-negotiable, and noting that the Association's grievance seeks to arbitrate the Board's ability to make those assignments and is not a grievance which alleges a violation of contract provisions relating to workload or duty free time periods, the subject of the grievance must be found to be non-negotiable and non-arbitrable.

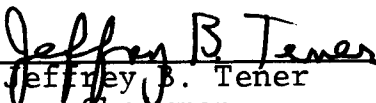
ORDER

Based upon the foregoing discussion, the Board's request

^{3/} We recognize that the parties' collective agreement contains a clause guaranteeing a minimum 30 minute duty free lunch period, and that the Association alleges in its brief that the duty free period has been affected and that there has been an increase in workload. Although we have held that changes in a contractual duty free period, and changes in workload, are negotiable, we note that those issues have not been raised in the instant grievance or scope petition and are therefore not appropriately before the Commission for consideration.

for a permanent restraint of arbitration is hereby granted.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
March 20, 1980