

P.E.R.C. NO. 92-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-61

FAIRVIEW EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of three grievances filed by the Fairview Education Association against the Fairview Board of Education. The grievances allege that the Board violated the parties' collective negotiations agreement when it assigned teachers to cover lunch and library periods and took away preparation time. The Commission finds that the alleged increases in teacher workload and pupil contact time and reductions in preparation time are mandatorily negotiable. It further finds that compensation for workload increases is severable from any asserted managerial prerogative and is mandatorily negotiable.

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Appearances:

For the Petitioner, Oury, Mizdol & Brovarone, attorneys
(Richard A. Brovarone, of counsel)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION AND ORDER

On February 11, 1991, the Fairview Board of Education filed three petitions for scope of negotiations determination. The Board seeks restraints of binding arbitration of three grievances filed by the Fairview Education Association. The grievances allege that the Board violated the parties' collective negotiations agreement when it assigned teachers to cover lunch and library periods and took away preparation time.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's teachers. The parties entered into a collective negotiations agreement effective

from July 1, 1987 until June 30, 1990.^{1/} Article VI, Section D provides that seventh and eighth grade teachers shall receive five preparation periods a week and first through sixth grade teachers shall receive four preparation periods a week "whenever scheduling and the needs of the district permit." The grievance procedure ends in binding arbitration of contractual disputes.

On September 20, 1990 and January 14, 1991, the Association filed two grievances alleging that the Board violated Article VI, Section D and past practice when it assigned two gym teachers to lunch duty. The grievances were denied, in part because there was allegedly no one to supervise the lunchroom.^{2/} Both teachers lost preparation periods. Neither teacher was paid extra compensation for the extra duty time.

On September 26, 1990, the Association filed a grievance alleging that the Board violated past practice when it unilaterally required elementary school teachers to teach their classes during library periods and thus diminished the teachers' preparation time. The grievance was denied because no librarian was available. More specifically, the County Superintendent had prohibited the librarian from working because the librarian had failed to continue mandatory education courses to obtain certification and the Board was unable to obtain a replacement immediately through advertisements and

^{1/} A new agreement has been reached but not executed.

^{2/} The principal had apparently supervised the lunchroom in prior years.

inquiries. Each teacher lost a preparation period each week and was not paid extra compensation for the extra teaching time.

In December 1990, the Board hired a full-time librarian and restored the teachers' preparation periods. The Association continued to demand compensation.

The Association demanded binding arbitration of the three grievances. The petitions ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

We therefore do not consider the contractual merits of these grievances or the Board's contractual defense that "scheduling and the needs of the district" did not permit it to provide the full number of preparation periods.

The Board asserts that it had a managerial prerogative to assign teachers to cover library and lunch periods. The Association responds that preparation periods and workload increases are mandatorily negotiable, and that even if the assignments were held to be not mandatorily negotiable, the question of extra compensation for extra duty and teaching time would be legally arbitrable.

The decision to assign teaching staff supervision duties ensuring student safety and control is not mandatorily negotiable. Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988); see also In re Byram Bd. of Ed., 152 N.J. 12, 26 (App. Div. 1977). But these grievances do not challenge that general right. The lunch supervision grievances contest increases in teacher workload and pupil contact time and reductions in preparation time. Such issues have long and often been held to be mandatorily negotiable. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973); Byram; Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 90-80, 16 NJPER 176 (¶21075 1990), aff'd App. Div. Dkt. No. A-4090-89T2 (7/17/91); Highland Park Bd. of Ed., P.E.R.C. No. 89-83, 15 NJPER 100 (¶20047 1989); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 86-85, 12 NJPER 102 (¶17039 1985); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 85-94, 11 NJPER 219 (¶16084 1985); East Newark Bd. of Ed., P.E.R.C. No. 82-23, 8 NJPER 373 (¶13171 1982); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/20/80). The Board has not shown that arbitrating a dispute under the contractual provisions on preparation periods would significantly interfere with its educational goals.

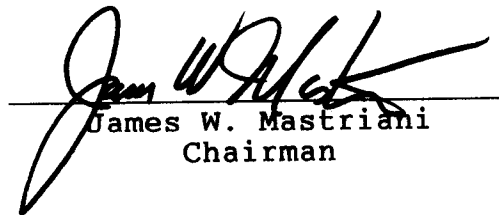
As for the library grievance, the preparation periods have been restored and only compensation for past assignments remains in dispute. Compensation for workload increases is severable from the

asserted managerial prerogative and is mandatorily negotiable. Lincoln Park Bd. of Ed., P.E.R.C. No. 86-125, 12 NJPER 432 (¶17160 1986); see also Rahway Bd. of Ed., P.E.R.C. No. 88-29, 13 NJPER 757 (¶18286 1987); Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd App. Div. Dkt. No. A-4545-85T7 (3/23/87), certif. den. 108 N.J. 208 (1987); Kingwood Tp. Bd. of Ed. v. Kingwood Tp. Ed. Ass'n, App. Div. Dkt. No. A-1414-84T7 (11/25/85); Hope Tp. Bd. of Ed., P.E.R.C. No. 83-126, 9 NJPER 217 (¶14102 1983). This is true for the other two grievances as well. Accordingly, we deny the request for restraints of binding arbitration.

ORDER

The request of the Fairview Board of Education for restraints of binding arbitration is denied.

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: October 17, 1991
Trenton, New Jersey
ISSUED: October 18, 1991