

P.E.R.C. NO. 96-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLIFTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-67

CLIFTON TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Clifton Teachers Association against the Clifton Board of Education. The grievance asserts that the Board violated the parties' collective negotiations agreement when it assigned teachers on lunch duty to playground supervision. The Commission finds that assignments to supervise students on the playground relate to student safety, security and control. The Commission further finds that the assignments in this case substitute one form of student supervision for another and do not increase student supervision time.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Anthony P. Sciarrillo, attorneys
(Anthony P. Sciarrillo, of counsel)

For the Respondent, Bucceri & Pincus, attorneys
(Louis P. Bucceri, of counsel)

DECISION AND ORDER

On January 24, 1995, the Clifton Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Clifton Teachers Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it assigned teachers on lunch duty to playground supervision.

The parties have filed certifications, 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, 1992 to June 30, 1996. Article VIII is entitled Elementary Teachers Lunch Period. It provides:

Elementary Teachers shall have a duty-free Lunch and Playground Period from 11:45 a.m. to 12:35 p.m. with the exception of the following.

1. Resource Room Personnel required to assume lunchroom coverage for special education pupils and who will be given an equal alternate lunch period; and,
2. Traveling teachers and non-classroom teachers (Art, Vocal Music, Instrumental Music, Physical Education, ESL, Bi-Lingual and Resource Room) on days they are not traveling, who shall provide lunchroom coverage not to exceed 30 minutes per day providing, these teachers shall:
 - a. Receive a 45 consecutive minute lunch period between 11:30 a.m. and 1:00 p.m.
 - b. Retain a 30 consecutive minute preparation period.
 - c. Be permitted to leave school 10 minutes early on coverage days Monday through Thursday and 15 minutes early when coverage day is Friday or a Friday schedule.
 - d. Will have the assistance of the Principal and lunchroom aides in supervising the lunchroom.
 - e. Not receive any other assigned duty on coverage day.
 - f. Not provide lunch coverage more than 3 days per week (Every effort shall be made to limit such coverage to two (2) days per week.)

No other elementary teacher shall be assigned to lunchroom coverage.

A joint committee of the Association and the Board/Administration will re-evaluate the operation of this program and make appropriate recommendations approximately halfway through the first year of its implementation.

According to the Association's president, the Association agreed to this article only after the Board president assured it that the article pertained to lunchroom duties only and that teachers would not be required to supervise the playground. The agreement was then ratified in late October 1993. The agreement's grievance procedure ends in binding arbitration of contractual disputes.

Before December 1993, elementary school principals and lunchroom aides had supervised students on playgrounds when the weather permitted students to go outside during lunch periods. The Board then reduced the number of lunchroom aides.

On December 6, 1993, some elementary school principals began assigning playground duties to certain teachers. These assignments apparently did not increase the time the teachers spent supervising students since those teachers already had lunchroom duty.

On December 9, 1993, the Association grieved the assignment of playground duty to teachers. After the grievance was denied, the Association demanded arbitration. This petition 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.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have. Further, we do not consider the Association's allegation that the Board negotiated in bad faith.

In Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403 (¶23182 1992), we reviewed the case law addressing the negotiability of non-teaching duties. We stated:

In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977), holds that teachers may negotiate over having to perform non-teaching duties. But certain non-classroom assignments relating to student safety, security and control are not mandatorily negotiable. The method of distributing these assignments and compensation for performing them are mandatorily negotiable and arbitrable issues. See Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd App. Div. Dkt. No. A-2131-88T5 (10/12/89). However, regardless of the type of duty assignment involved, reductions in preparation time and increases in workload caused by the substitution of a duty period for a preparation period are mandatorily negotiable. Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82). Thus, maintenance of contractual preparation time guarantees and workload ceilings may be enforced through grievance arbitration. See, e.g. Newark Bd. of Ed., P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), recon. den. P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80).

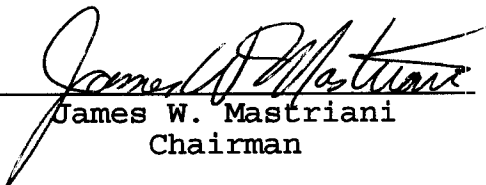
Assignments to supervise students on the playground relate to student safety, security, and control. Florham Park Bd. of Ed., P.E.R.C. No. 93-64, 19 NJPER 117 (¶24056 1993); Waterford Tp. Bd. of Ed., P.E.R.C. No. 92-35, 17 NJPER 473 (¶22228 1991); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984). The

assignments in this case substitute one form of student supervision for another and do not increase student supervision time. Wanaque Bor. Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981). The Association has not identified any issues severable from the assignments themselves. We accordingly restrain arbitration.

ORDER

The request of the Clifton Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: July 28, 1995
Trenton, New Jersey
ISSUED: July 28, 1995