P.E.R.C. NO. 79-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAHWAY BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-79-10

RAHWAY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission in a Scope of Negotiations Proceeding initiated by the Rahway Board of Education determines that the issue of the workload of guidance counselors is a required subject for collective negotiations and is arbitrable if otherwise arbitrable under the parties' agreement. The Board's request for a restraint of arbitration relating to these workload issues is hereby denied.

The Commission however permanently enjoined the Association from proceeding to arbitration with respect to challenging the permanent assignment of a counselor to the position of High School Counselor for Vocational and College Placement or that this permanent assignment has denied other guidance counselors a "professional advantage".

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Appearances:

For the Petitioner, Magner, Abraham, Orlando, Kahn & Pisansky, Esqs.
(Leo Kahn, Esq., on the Letter Memorandum of Law)

For the Respondent, Goldberg & Simon, Esqs.
(Gerald M. Goldberg, Esq., on the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-79-10, was filed with the Public Employment Relations Commission (the "Commission") on September 19, 1978 by the Rahway Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the Board and the Rahway Education Association (the "Association") was within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Board in its submissions stated that the Association had grieved and was seeking to arbitrate the Board's decision to permanently assign one guidance counselor

within the school district to the position of Counselor for Vocational and College Placement at the Senior High School. The Board sought a temporary stay of arbitration relating to this issue pending a final administrative determination by the Commission concerning the instant Scope of Negotiations Petition.

At a conference held on October 23, 1978 convened by the Special Assistant to the Chairman, Stephen B. Hunter, the parties informally agreed to a voluntary stay of arbitration pending the Commission's final administrative decision in this case. In support of its contentions the Board submitted a letter in lieu of brief dated September 13, 1978 and an additional letter dated November 9, 1978. The Association submitted a brief in opposition to the request for interim relief that was dated November 6, 1978. In a letter dated November 15, 1978 the Association amended the remedies sought in its demand for arbitration.

The relevant facts are uncontroverted in this proceeding. For some years the Board had assigned teaching staff members who were guidance counselors to rotate with a particular class starting with the seventh grade through the twelfth grade. Upon the graduation of a particular twelfth grade class, the counselor who had served that class would remain in the high school for an additional year as the counselor for vocational and college placement. Then that counselor, pursuant to this "Grade Sequence Program" (the "GSP"), would be assigned to another seventh grade class to start the cycle again. The theory enunciated for the GSP was that a counselor would know the children in a particular class

over a six year period and the children would get to know the counselor.

In June of 1977 the Director of Student Personnel Services recommended to the Superintendent a proposed change in the rotation of counselors after consulting with other supervisory and administrative personnel. This change, which was subsequently implemented by the Board, provided for the hiring of a seventh guidance counselor who would be permanently assigned as the counselor for vocational and college placement. The other six guidance counselors ceased to rotate to that particular position and upon the graduation of the twelfth grade class the counselor assigned to that class would be assigned the following year to the incoming seventh grade class.

A grievance was filed by the guidance counselors within the unit represented by the Association on September 21, 1977. The grievants alleged essentially that the change in the GSP violated a past practice clause in the parties' agreement (Article XXXI, Subsection D) as well as an Article within the contract that stated in part that "[N]o teacher shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause" (Article IV, Subsection C). The grievants originally sought as relief the reassignment of the affected guidance counselors to their next respective step on the GSP as that program had been administered prior to the reorganization implemented by the Board. The Board denied the

grievance in January of 1978. A demand for arbitration was then filed by the Association. However the parties agreed to hold the arbitration in abeyance until the New Jersey Supreme Court decided several then pending cases before it relating to the subject matter of the instant grievance. Subsequently, the Association attempted to proceed with its demand for arbitration and the Board then sought to restrain this arbitration by filing this Scope of Negotiations Petition and by seeking a temporary stay of arbitration.

The Board maintains that the matter in issue is the Board's right to assign and deploy its professional employees in the manner it considers most likely to promote the goal of providing all of its students with a thorough and efficient education. The Board cites the New Jersey Supreme Court's decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) in support of its position. In this decision, in pertinent part, the Court determined that the 1974 amendments (Chapter 123) to the Act had not created a class of permissively negotiable matters which were both negotiable on a voluntary basis and enforceable through the parties' grievance procedure or through judicial intervention. The Supreme Court reaffirmed its holding as set forth in the Dunellen Trilogy of decisions [1/] that there were but two categories of subjects in public employment negotiations -- mandatorily negotiable terms and

1/ Dunellen Bd. of Education v. Dunellen Education Assn, 64 N.J. 17 (1973); Burlington County College Faculty Assn v. Board of Trustees, 64 N.J. 10 (1973); Board of Education v. Englewood Teachers Assn, 64 N.J. 1 (1973).

conditions of employment that could be enforced through an arbitration mechanism, as provided for in the parties' contract, and non-negotiable matters of governmental policy that could not be arbitrated. 2/ The Court in Ridgefield Park specifically stated that teacher transfers and reassignments were not mandatorily negotiable and thus disputes concerning these issues were not arbitrable. The Board in the instant matter maintains that inasmuch as the Association was grieving the decision to change the assignments of guidance counselors, the Ridgefield Park decision is dispositive. In response to the Association's amended Demand for Arbitration, which did not seek to challenge the Board's reorganization of the guidance department and its assignment decisions, the Board submitted that even the impact of its decision on the workload and working conditions of the guidance counselors was not arbitrable since the effect, if any, on the terms and conditions of employment of the counselors was directly related to the Board's managerial decision concerning the partial reorganization of the guidance counselor department.

The Association submits that it is not seeking to attack in any way the Board's decision to reorganize the guidance department, i.e. to permanently assign one newly hired counselor to the position of counselor for vocational and college placement. The Association states that under the prior GSP the counselor then assigned to the position of Vocational and College Placement Counselor would assist the eleventh grade counselor in terms of caseload by handling one

2/ See also West Windsor Tp. v. Public Employment Relations Commission, 78 N.J. 98 (1978).

third of the eleventh grade class and would also assist the eleventh grade counselor in the testing of students within that class. The Association asserts that as the result of the reorganization, the eleventh grade counselor lost the caseload and testing assistance of the guidance counselor in the Vocational and College Placement position. The Association maintains that it is seeking to arbitrate the issue of the increased workload of the eleventh grade counselor, an issue that has been administratively and judicially determined to be a required subject for collective negotiations, and is not attempting to set aside any aspect of the Board's reorganization of the guidance department. The Association also argues that the workload of all the counselors would be affected by their inability, in light of the reorganization, to rotate to the High School placement counseling position since these counselors would now have to work additional hours outside the school day to familiarize themselves with new placement resources and materials. Lastly, the Association states that counselors were in addition grieving the loss of professional advantage by reason of their inability to rotate to the Placement Counselor position and thus be exposed in the academic context to college and career placement skills and resources.

After careful consideration of the parties' submissions in this matter the Commission concludes that the issue of alleged alterations in the workload of guidance counselors concerns a

mandatorily negotiable term and condition of employment. Therefore disputes relating to this issue may be submitted to arbitration, pursuant to the procedures contained in the parties' contract, if otherwise arbitrable under the parties' agreement. We are satisfied, in light of the Association's amended Demand for Arbitration referred to hereinbefore, that the Association is not seeking to attack the reorganization of the guidance department itself nor is it attempting to rescind the Board's permanent assignment of a recently hired counselor to the position of Vocational and College Placement Counselor. These particular decisions relate to managerial prerogatives and in light of Ridgefield Park, supra, can neither be subject to negotiations nor to arbitration.

The Supreme Court in State v. State Supervisory Employees Association, et al, 78 N.J. 54 (1978), citing Dunellen, supra, held that negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreements did not significantly interfere with the exercise of inherent managerial prerogatives pertaining to the determination of governmental policy. Judicial decisions in this State as well as Commission decisions have uniformly held that an employee's workload clearly relates to

terms and conditions of employment and thus is mandatorily negotiable.[3/] It has been determined essentially that negotiated agreements on a teachers' workload, for example, would not significantly interfere with the exercise of managerial prerogatives pertaining to the determination of educational policy. Disputes relating to workload issues may be submitted to arbitration, if otherwise arbitrable, for resolution.

The Board's argument that workload considerations are not arbitrable and, inferentially, non-negotiable because they directly relate to managerial decisions, i.e. the decision to reorganize the guidance department, if credited, would emasculate the concept of collective negotiations over terms and conditions of employment. To illustrate, it is axiomatic that increased pupil teacher contact time would result if a teacher's work day and number of teaching periods were increased by 50 percent. The fact that this hypothetical increase in a teacher work day effectuates a board of education's desire to increase pupil instructional time -- a matter relating to managerial prerogatives -- does not render the issue of an increase in a teacher's work day non-negotiable.[4/]

3/ See e.g. Burlington County College, supra, Byram Township Board of Education v. Byram Township Education Assn., 159 N.J. Super. 12 1977, affirming, as modified on other issues, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), In re Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977), motion for reconsideration denied, P.E.R.C. No. 78-37, 4 NJPER 6 (¶4003 1978), appeal pending App. Div. Docket No. A-1648-77.

4/ Cf. Galloway Twp. Bd. of Ed. v. Galloway Twp. Assn. of Educational Secretaries, 78 N.J. 1 (1978) and Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Assn., 78 N.J. 25 (1978).

It must be emphasized that our holding that the alleged effect on workload is negotiable and arbitrable does not mean that any change has in fact occurred or that such a change, assuming it did occur, would violate the parties' contract. These questions are for the arbitrator, including the question of an appropriate remedy, if any, assuming a violation occurred.

The Association also alleges that the loss of what is characterized as "professional advantage" suffered by the guidance counselors because of the Board's actions involves a term and condition of employment in that these individuals will be prevented from obtaining the additional college and placement skills and experience that would have been gained by rotating to the position of College and Vocational Placement Counselor every seventh year. While the broad issue of the loss of "professional advantage" or the more limited one of the opportunity to gain experience in varied aspects of one's profession may present difficult questions, we do not perceive that as the specific issue presented by this case. The question presented herein goes solely to the right of the Board not to assign these individuals to the position of College and Vocational Placement Counselor on a rotational basis as in the past. For the reasons stated hereinabove with respect to transfer and reassignments, this aspect of the dispute is not a term and condition of employment and is therefore non-negotiable and non-arbitrable. See Ridgefield Park, supra.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the issue of the workload of guidance counselors is a required subject for collective negotiations and is arbitrable if otherwise arbitrable under the parties' agreement. The Board of Education's request for a restraint of arbitration relating to the aforementioned workload issues is hereby denied.

The Association is permanently enjoined and restrained from proceeding to arbitration with respect to challenging the assignment of a counselor to the position of High School Counselor for Vocational and College Placement or that this permanent assignment has denied other guidance counselors a "professional advantage".

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

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

DATED: Trenton, New Jersey
December 14, 1978
ISSUED: December 15 1978