

P.E.R.C. NO. 82-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POMPTON LAKES BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-82-33

POMPTON LAKES EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The New Jersey Public Employment Relations Commission restrains arbitration of a grievance which the Pompton Lakes Education Association filed against the Pompton Lakes Board of Education. The grievance challenged a Board decision to increase the number of 20 minute detention periods a teacher must supervise from five to eight periods per year and to require students in detention to complete a writing assignment. The Commission holds that the changes in the detention program furthered educational goals, resulted in part from a reduction in force, and had a minimal effect on the teachers' work and welfare.

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Appearances:

For the Petitioner, Aron, Till & Salsberg, Esqs.
(Stephen R. Fogarty, of Counsel)

For the Respondent, William J. Flynn, Field
Representative, New Jersey Education Association

DECISION AND ORDER

On December 16, 1981, the Pompton Lakes Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain arbitration of a grievance which the Pompton Lakes Education Association (the "Association") has filed. The grievance challenged a Board decision to increase the number of 20 minute detention periods a teacher must supervise from five to eight periods per year and to require students in detention to complete a writing assignment. The parties submitted briefs and accompanying documents by January 28, 1982.

The following facts are not disputed. Teachers supervise detention from 3:00 p.m. until 3:20 p.m., after the close of the

instructional day, but before the teachers' working day ends at 3:27 p.m. The Assistant Principal relieves them and supervises the students until detention ends at 3:40 p.m. Prior to September, 1981, teachers received assignments to supervise detention five times per year. Each assignment consisted primarily of a single teacher attempting to maintain discipline for the period of supervision. Prior to the 1981-1982 school year, a Detention/Code Conduct Committee, consisting of several faculty members and administrators, recommended two changes in the detention program: (1) have two teachers supervise detention on days when an inordinate number of students were detained, and (2) have each student complete a writing assignment detailing his infraction, punishment, and comments, if any. The Board accepted these recommendations. At the same time, and in an action unrelated to the recommendations, the Board resolved to reduce its teaching staff. In order to institute the recommendations in light of the reduction in force, the Board increased the number of detention periods each teacher must supervise from five to eight periods per year.

The Association, seeking a return to the old detention program, maintains that the changes in the detention program increased teacher-pupil contact time and, as a result of the writing assignment, converted detention into a normal class period. The Association states that teachers supervising detention must hand out materials, explain the writing assignment, answer questions, collect papers, and check them to see if they are properly completed.

The Board responds that educational policy objectives and a reduction in force inspired its changes, that the changes had at most a de minimis impact on teachers, and that detention remained essentially a supervision period since teachers only had to collect, not evaluate, the writing assignments. The Assistant Principal, in an affidavit, states that teachers are not required to instruct students or answer questions during detention; instead, a large bulletin board sets forth, step-by-step, what is included in the assignment, and teachers can defer all questions until 3:20 p.m. when the Assistant Principal arrives. He evaluates the assignments. Finally, he avers that the new detention program has met its goal of decreasing recidivism.

In Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980), our Supreme Court established a balancing test for determining the arbitrability of a teacher's grievance: does the dominant issue involve an educational goal or the work and welfare of the teachers? In re Kingwood Bd. of Ed., P.E.R.C. No. 82-31, 7 NJPER 584 (¶12262 1981). We agree with the Board that its changes in the detention program furthered educational goals, resulted in part from a reduction in force, and had a minimal effect on the teachers' work and welfare.

In In re Caldwell-West Caldwell Ed. Ass'n, P.E.R.C. No. 80-64, 5 NJPER 536 (¶10276 1979), the Commission held that the Board did not commit an unfair practice when it eliminated its foreign language program, substituted 15 extra minutes of both English and Social Studies instruction per day, and subtracted 30 minutes of cafeteria supervision duty from the schedule of

affected teachers. The Appellate Division affirmed this ruling, concluding that when inspired by educational objectives, boards of education should have discretion to make changes which result in only minor deviations from past practice. The Court stated:

Thus, we are impelled to rule that a change from preexisting practice which is directly related to an educational purpose should not be measured by caliper and micrometer. Boards of education must be given some room to manage between contracts without being forced to bargain over every move they make. There must be some rounding of the edges of contention. The business of providing education is not an assembly line operation with productivity measured in discrete product units for which an exact exchange of compensation can be given. Cooperation of both sides is needed to fulfill the public trust of educating the children of this state in the time that runs from collective negotiation agreement to collective negotiation agreement. Disputes of a relatively minor nature arising in the interim must be quelled, and the aggregate of minor grievances should be resolved by compensatory across-the-board allowances in the next contract.

180 N.J. Super. at 449.

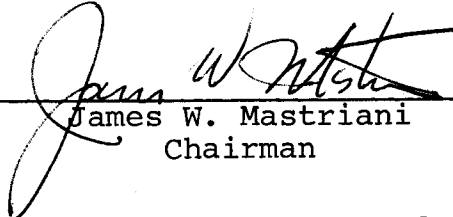
In the instant case, the changes in the detention program unquestionably promote educational goals. The writing assignment requires students to consider their misconduct and is a more constructive use of time than merely sitting silently. The increase in the number of detention periods per teacher per year also serves an educational goal -- increased supervision on days when a large number of students is detained -- while at the same time reflecting the inevitable consequence of a reduction in force. On the other side of the balance, teachers must now supervise detention only one extra hour per year. The Assistant Principal, not the teacher supervising detention, is responsible for developing and evaluating the assignments. Under these

circumstances, we believe that the entire controversy is non-arbitrable.^{2/}

ORDER

IT IS HEREBY ORDERED that the Pompton Lakes Board of Education's request for a permanent restraint of arbitration is granted.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

Chairman Mastriani, Commissioners Butch, Hartnett and Suskin voted in favor of this decision. Commissioner Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
 March 9, 1982
 ISSUED: March 10, 1982

^{2/} We do not suggest that workload or the substitution of supervisory duty for duty-free time is non-negotiable. There exists a long line of precedent upholding the negotiability of these subjects. See, e.g., Maywood Bd. of Ed. v. Maywood Ed. Ass'n, 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979) and Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976). See also, In re Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (¶10255 1979), aff'd App. Div. Docket No. A-954-79, pet. for certif. den. 87 N.J. 310 (1981). We hold only that in the unusual circumstances where demonstrated educational policy objectives dwarf a de minimis increase in a teachers' supervisory duty, the entire controversy may be non-arbitrable. See also, In re Cinnaminson Twp. Bd. of Ed., P.E.R.C. No. 82-___, 8 NJPER ___ (¶_____ 1982), also decided today.