

P.E.R.C. NO. 98-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIVER VALE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-39

RIVER VALE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the River Vale Board of Education for a restraint of binding arbitration of a grievance filed by the River Vale Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it assigned teachers to lunchroom supervision. The Commission restrains arbitration to the extent the grievance asserts that the Board cannot assign lunchroom supervision to teachers. The restraint is denied to the extent the grievance seeks to enforce a contractual right to a duty-free lunch period.

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, Fogarty & Hara, attorneys
(Rodney T. Hara, of counsel)

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

DECISION

On October 20, 1997, the River Vale Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the River Vale Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it assigned teachers to lunchroom supervision.

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

The Association represents all certificated personnel. The parties entered into a collective negotiations agreement effective from July 1, 1996 to June 30, 1998. Article VI, Section J provides, in part:

In Holdrum's eight period school day, each teacher will teach five classes, have one personal preparation period, have one lunch period and assigned team or duty period(s) as follows:

Core team teachers in grades 6, 7, and 8 will be assigned three team meeting periods per week and two assigned duty periods.

Encore team teachers - music, physical education, etc. - will be assigned two team meeting periods a week and three assigned duty periods.

These specific assigned duty periods would consist of hall duty and in school suspension supervision.

The negotiated grievance procedure ends in binding arbitration. Apparently, Holdrum school teachers have supervised students during lunch for years. At the beginning of the 1996-1997 school year, they continued to perform and be paid for that duty.

On December 17, 1996, the Association filed a grievance alleging that the Board had violated Article VI, Section J by assigning teachers to lunchroom supervision duty. The grievance asked that the Board allow all teachers a duty-free lunch period.

The principal and the superintendent denied the grievance. The superintendent asserted that the grievance was untimely because it had not been filed within 30 days of the start of the school year and that the Association had abandoned the grievance. He also denied the grievance on its merits, stating:

Under state law, the District always has the prerogative to assign teachers to supervise students to promote a governmental policy. Here, the need to ensure the safety of the students during the period is paramount and clearly

outweighs any interest the RVEA may have in negotiating the decision to require such supervision. Additionally, the District presently compensates the teachers \$9.00 per hour for lunchroom supervision and the teachers have performed this duty with compensation since it was originally assigned several years ago. Thus, the grievance must be denied on the merits.

The grievance refers to the language contained in Article VI, Paragraph J of the Agreement between the River Vale Board of Education and the River Vale Education Association. If the RVEA had intended that the new language contained in Paragraph J would eliminate lunch room duty, it would have been stated clearly in the contract language. The contract, as written, does not mention lunchroom supervision, and therefore, past practice must be used to determine the understanding between the parties. The longstanding past practice of teachers performing lunchtime supervision clearly establishes the understanding between the parties. Thus, again, the grievance must be denied.

Finally, Mr. Kane demonstrated, in writing, to the RVEA and all affected members that affected staff members could ensure themselves of a duty-free lunch period on days when they are assigned to cafeteria supervision by manipulating their schedules. Such manipulation constitutes a de minimis burden on affected staff members particularly when viewed in tandem with the important educational goal of maintaining adequate supervision for student lunch periods. Additionally, it is clear that the District has a managerial and contractual prerogative to require staff members to adjust their schedules along the above referenced parameters.

On February 25, 1997, the Board denied the grievance. It asserted, in part, that each teacher assigned lunchroom supervision duty was paid \$9.00 an hour and was relieved from having to attend a team meeting.

On April 23, 1997, 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, including the Association's claim that Article VI, Section J limits permissible duty periods to hall duty and in-school suspension supervision. We also do not consider any contractual defenses, including the Board's claims that the grievance was untimely filed and was abandoned.

Balancing the interests of employees and the Board's obligation to ensure student safety, the courts and the Commission have held that school boards have a managerial prerogative to assign teachers to supervise students during student lunch periods. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 24 (App. Div. 1977); Belleville Bd. of Ed., P.E.R.C. No. 79-11, 22 NJPER 320 (127162

1996); Union Tp. Bd. of Ed., P.E.R.C. NO. 89-50, 14 NJPER 692 (¶19295 1988), aff'd NJPER Supp.2d. (¶189 App. Div. 1989); Atlantic Highlands Bd. of Ed., P.E.R.C. NO. 87-28, 12 NJPER 758 (¶17286 1986). We decline the Association's invitation to reapply the balancing test set forth in Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) to decide whether that rule should be applied to this particular case -- the case law has already applied the balancing test in determining that the subject of having teachers supervise student lunches is not mandatorily negotiable. Contrast In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987) (requiring case-by-case determination of negotiability of police work schedules). We accordingly restrain binding arbitration of this grievance to the extent it asserts that the Board cannot assign lunchroom supervision to teachers.

We note, however, that teachers may arbitrate to enforce an alleged contractual right to a duty-free lunch period. We will not restrain arbitration to the extent, if any, the grievance raises such a claim.

ORDER


The request of the River Vale Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the Board's right to assign lunchroom supervision

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to teachers. The request for a restraint of binding arbitration is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998
Trenton, New Jersey
ISSUED: January 30, 1998