P.E.R.C. NO. 85-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KINGWOOD TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-85-43

KINGWOOD TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Kingwood Township Board of Education to restrain binding arbitration of a grievance that the Kingwood Township Education Association filed against the Board. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it reduced preparation time of special area teachers and increased pupil contact time without compensation. The Commission holds that the dispute pertained to an increase in workload which is mandatorily negotiable and therefore may be submitted to binding arbitration.

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Appearances:

For the Petitioner, Gaetano M. De Sapio, Esq.

For the Respondent, John A. Thornton, Jr.
New Jersey Education Association

DECISION AND ORDER

On December 10, 1984, the Kingwood Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a permanent restraint of binding arbitration of a grievance filed by the Kingwood Township Education Association ("Association"). The grievance alleges that the Board violated its collective negotiations agreement with the Association when it allegedly reduced preparation time of special area teachers and increased pupil contact time without compensation. As a remedy, the Association seeks additional compensation for the alleged increase in workload.

Simultaneously with the filing of the petition, and pursuant to N.J.S.A. 19:14-9.2, the Board also filed an application for interim relief with a proposed order to show cause seeking to bar the issuance or enforceability of any arbitration award.

On February 19, 1985, following oral argument, Chairman Mastriani denied petitioner's application for interim relief since he found that it had not demonstrated a substantial likelihood of success on the merits of the negotiability issue or that irreparable harm would occur if the requested relief was not granted. See, e.g., Hopatcong Bd. of Ed., I.R. No. 85-10, 11 NJPER ___ (Para. _____ 1985) mot. for stay den. App. Div. Docket No. AM-641-84T3 (Motion No. 2476-84, 2/11/85); Alexandria Township Bd. of Ed., I.R. No. 84-5, 10 NJPER 1 (Para. 15000 1983).

Both parties have filed briefs[1/] and accompanying documents. The following facts appear.

The Association is the majority representative of all the Board's certified personnel. The Association and the Board have entered a collective negotiations agreement effective July 1, 1984 through June 30, 1986. The agreement contains a clause which provides:

> Except as this Agreement shall herein otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement as established by the rules, regulations, and/or policies of the Board in force on said date, shall continue to be applied during the term of this Agreement.

The agreement contains a grievance procedure which culminates in binding arbitration.

1/ In addition to filing a brief and reply brief, the Board, on March 14, 1985, requested oral argument. We deny that request.

In the 1983-84 school year, the Board reduced the preparation time of certain special area teachers by between 20-50[2/] minutes per week and increased pupil instructional time by the same amount. No additional compensation was provided, nor was the change discussed with the Association. According to the Board's chief school administrator, this change was made so that the amount of special area time would be equalized among the different grade segments.

The Association filed the following grievance:

> The Association does hereby grieve the fact that the Special Area Teachers - Art, Library, Music & Physical Education have lost preparation time due to the new schedule (last period beginning at 2:35 as opposed to 2:25 during previous years).
>
> In accordance with Article III & the current Agreement, the Association files this grievance contending the following articles have been violated Articles VII A, XIV C, change in terms and conditions of employment, and any other articles relevant to the instant matter.
>
> Article VII A "...reduced in rank or compensation without just cause."
>
> The Association contends that the above mentioned teachers have been reduced in compensation due to the change in schedule, therefore cutting their preparation time drastically, compared to other members of the teaching staff, by changing the last period of the day and cutting it by 10 minutes.
>
> P.E. - 50 mins. per week
> Art - 20 mins. per week
> Lib. - 40 mins per week
> Music - 40 mins. per week

2/ Preparation time was reduced by 50 minutes for physical education teachers, 20 minutes for art teachers, 40 minutes for librarians and music teachers.

> Article XIV C - " Every effort....to allow preparation for teachers.
>
> The Association feels that every effort was not made to allow the special area teachers their preparation.

As a remedy, it sought "monetary compensation on a pro-rated per diem for the above mentioned teachers."

The Board contends that the instant matter is a managerial prerogative since the change in schedule allegedly arose out of a basic education decision and did not lengthen the school day. It cites Bd. of Ed. Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980). In the alternative, it contends the changes were de minimis and therefore not negotiable under Caldwell-West Caldwell Bd. of Ed. v. Caldwell-West Caldwell Education Ass'n, 180 N.J. Super. 440 (App. Div. 1981). Finally, it contends that the Board's actions were contractually permitted.

The Association contends that preparation time is mandatorily negotiable. It cites, among other cases, Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976).

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Thus, in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed. P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), stated:

> 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 questions 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.

In the instant case, therefore, we do not consider the merits of the grievance or the Board's defense that it had a contractual right to reduce preparation time and replace it with pupil contact time.

The instant dispute concerns an uncompensated increase in workload resulting from an elimination of a portion of a preparation period with a corresponding increase in pupil contact time. It is well-settled that such matters are mandatorily negotiable and may, therefore, be submitted to binding arbitration. Newark Board of Education, P E.R.C. No. 79-38, 5 NJPER 41 (Para. 10026 1979), aff'd App. Div. Docket No. A-2060-78 (2/20/80) is directly on point. There, we said:

> It was clearly established in Burlington County College Faculty Assn v. Board of TGrustees, 64 N.J. 10 (1973) that workload is mandatorily negotiable. We do not perceive how removal of a preparation period to be replaced by teaching is not a change in workload falling precisely under Burlington. Byram [152 N.J. Super. 12] and Red Bank [138 N.J. Super. 564]. Even though preparation periods may have been required to be used for educational purposes, there is still additional work to be performed, and we doubt that the Board would seriously contest that teachers must still do as much - or, given the extra class to be taught, more - preparational work as before the shift.

In affirming, the Appellate Division said:

> ...New Jersey courts have consistently found that a teacher's workload is a term and condition of employment which is mandatorily negotiable, even though the change in workload was caused by a change in educational policy. See Bd. of Ed. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Assn., supra; Burlington Cty. College Faculty Assn. v. Bd. of Trustees, 64 N.J. 10, 12 (1973); In re Maywood Bd. of Ed., 168 N.J. Super. 45, 59 (App. Div. 1979) certif. den. 81 N.J. 292 (1979); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App Div. 1976); In re Galloway Tp. Bd. of Ed., 157 N.J. Super. 74 (App. Div. 1978).
>
> Relying on In re Byram Tp. Bd. of Ed , supra, and Red Bank Bd. of Ed. v. Warrington, supra, PERC found that the change in workload and was mandatorily negotiable. It did not err in doing so.
> [Slip opinion at 5-6].

This decision is consistent with the well-established and oft-stated holding that an increase in teacher workload and pupil contact time is mandatorily negotiable. See Burlington County College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979); In re City of Bayonne Bd. of Ed., P.E.R.C. No. 80-58, 5 NJPER 499 (Para. 255 1979), aff'd App. Div. A-954-79 (1980), certif. den. __ N.J. ___ (1980); In re Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (Para. 11026 1979), aff'd App. Div Dkt. No. A-3380-80T2 (3/16/82); In re Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 80-13, 8 NJPER 26 (Para. 13171 1982); and In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (Para. 14057 1982).

Finally, we do not agree with the Board's contention that the change here is de minimis. We considered and rejected an identical claim in Lincoln Park, supra:

> We further disagree with the Board's assertion that this dispute, although mandatorily negotiable and arbitrable in the abstract, should not be arbitrated because the increase in pupil contact time is allegedly insignificant. The policy of the New Jersey Employer-Employee Relations Act favors arbitration as a voluntarily agreed-upon mechanism for resolving employee grievances quickly and efficiently rather than having these grievances fester and disrupt the workplace. Here the Board and the Association have agreed upon binding arbitration as the mechanism for resolving disputes arising under contractual provisions such as those governing work day and bus duty. We believe that the legislative policy favoring the voluntary adoption of arbitration as a means to resolve mandatorily negotiable and arbitrable disputes should not be easily displaced. When, as here, a permanent change is made in the workloads and pupil contact time of all teachers leading to recurring and uncompensated additional duties, we cannot say that the dispute is too insignificant to be submitted to the legislatively-favored and voluntarily-negotiated forum of binding arbitration. See Bridgewater-Raritan; In re Hope Twp. Bd. of Ed., P.E.R.C. No. 83-126, 9 NJPER 217 (Para. 14102 1983); In re Perth Amboy Bd. of Ed., P.E.R.C. No. 83-63, 9 NJPER 16 (Para. 14007 1982). [Id. at 648].

Accordingly, for the reasons set forth above, we hold that the instant grievance may be submitted to binding arbitration.

ORDER

The request of the Kingwood Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Butch, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985