

P.E.R.C. NO. 80-151

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTHERN BURLINGTON COUNTY  
REGIONAL BOARD OF EDUCATION,

Petitioner,

Docket No. SN-80-72

-and-

NORTHERN BURLINGTON COUNTY  
REGIONAL TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Chairman of the Commission concludes that the gravamen of the relevant grievance relates solely to the basic format of a teacher's lesson plans and to how these lesson plans will be utilized, i.e., for purposes of teacher evaluation and course monitoring, issues which are neither mandatorily negotiable nor arbitrable. Accordingly, the Chairman grants the Board of Education's request for a permanent restraint of arbitration.

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Appearances:

For the Petitioner, Parker, McCay and Criscuolo, P.C.  
(Mr. Stephen J. Mushinski, of Counsel)

For the Respondent, Selikoff & Cohen, P.A.  
(Mr. John E. Collins, of Counsel)

DECISION AND ORDER

On January 16, 1980 the Northern Burlington County Regional Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a matter in dispute between the Board and the Northern Burlington County Regional Teachers' Association (the "Association") was within the scope of collective negotiations and therefore legally arbitrable. The Board and the Association filed briefs and letter memoranda concerning their respective contentions in this matter, all of which were received by April 8, 1980.<sup>1/</sup>

1/ The parties attempted to resolve the relevant grievance in this matter over a period of several months, which in part resulted in a delay in the filing of briefs in this matter. The Commission was finally advised on March 25, 1980 that the parties had been unable to conclude an agreement in this matter.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the Chairman the authority to issue scope of negotiations decisions when the negotiability of the issue(s) in dispute has been previously determined by the Commission and/or the State judiciary.

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The relevant facts in this matter are not in dispute. Immediately following the issuance of an administrative directive regarding the submission of lesson plans, the Association filed a grievance alleging certain contractual violations, as well as a violation of past practice. The matter has proceeded through the grievance procedure with a denial of the grievance by the Board of Education at Level Four. Subsequent to the Board's decision, a demand for arbitration was filed by the Association alleging:

a violation of the 1978-80 negotiated Agreement and past practice by the Board of Education through its administrative agents by their unilateral imposition and requirement that lesson plans be submitted to administration by a specific day of each week.

The Board seeks a ruling that the dispute set forth above is not an arbitrable one, and further seeks a ruling restraining and preventing the administration of this arbitration proceeding.

The Board maintains that the requirement of the submission of copies of lesson plans to the Board to evaluate course content as well as the teaching performance of individual teachers is a managerial prerogative and that the decision to implement that requirement is not arbitrable. The Association in its original brief conceded that when lesson

plans are used for the purpose of evaluating teachers, at least the adequacy of those plans concerned a matter relating to evaluation criteria which was non-negotiable and non-arbitrable. The Association maintained in its original brief that the method of administrative review of those plans, e.g., whether lesson plans would be requested by administrators on an ad hoc basis pursuant to Article IV(C)(1) or whether all teachers would be required to submit copies of lesson plans at the close of each week, was purely a procedural matter and thus subject to mandatory negotiations and arbitration. Subsequently, in a letter memorandum dated April 7, 1980, the Association, citing a Commission decision, In re Middlesex Board of Education, P.E.R.C. No. 80-98, 6 NJPER 82 (¶11042 1980), apparently changed its legal analysis concerning the instant matter. The Association in this letter submission suggested that utilizing the language of the Middlesex decision, the format and content of lesson plans relates to evaluation criteria and were thus non-negotiable matters. However, it was contended that the application of these criteria in a manner affecting terms and conditions of employment was a negotiable matter in light of its impact on its terms and conditions of employment.<sup>2/</sup>

The undersigned, after careful review of the parties' briefs and letter memoranda and relevant exhibits, concludes that

<sup>2/</sup> The Association in this April 7, 1980 letter maintained that the issue of whether copies of lesson plans are submitted weekly, bi-weekly, monthly or not at all involves workload considerations.

the instant dispute relates solely to the basic format of a teacher's lesson plans and to how these lesson plans will be utilized, i.e. for purposes of teacher evaluation and course monitoring. The Commission in the past has determined that issues such as these are neither mandatorily negotiable nor arbitrable. In In re West Amwell Township Board of Education, P.E.R.C. No. 78-31, 4 NJPER 23 (¶4012 1977), the Commission found that the basic format and content of teacher lesson plans was not a required subject of collective negotiations. Moreover, the Commission in In re Middlesex Board of Education, P.E.R.C. No. 80-147, 6 NJPER \_\_\_\_ (¶\_\_\_\_ 1980), reversed its earlier decision cited by the Association and referred to the Appellate Division's recent decision in In re Hazlet Township Bd of Ed, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979), PERC rev'd App. Div. Docket No. A-2875-78 (3/27/80). In pertinent part, in light of the Association's legal analysis set forth in its supplemental letter, the Appellate Division specifically rejected the Commission's view in the Hazlet decision that the application of evaluation criteria but not the criteria themselves was a mandatory subject of collective negotiations. The Appellate Division in Hazlet rejected the view that one could distinguish between the development of evaluation criteria and the application of said criteria.

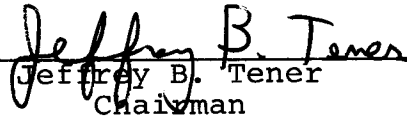
It is noted that although the Association in its several submissions tangentially refers to workload implications attached to the Board's decision in this matter, the grievance,

the demand for arbitration, and the bulk of the Association's submissions do not refer to workload. The requested relief sought by the Association, for example, would stay the Board's order concerning the submission of lesson plans at the end of each week.<sup>3/</sup> The Association has not cited a contractual workload clause which it claims has been violated by the Board.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Board of Education's request for a permanent restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

  
Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
June 5 , 1980

<sup>3/</sup> In this regard it appears uncontroverted that teachers within the district had previously been required to prepare lesson plans although they had not previously been required to submit these lesson plans to the administration each week.