

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST BRUNSWICK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-29

EAST BRUNSWICK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board, the Commission determines that to the extent that the Board of Education's decision to undertake a curriculum review and revision at the high school level on a department by department basis, has an impact on the terms and conditions of employment of the employees involved, the impact or effect of that decision on terms and conditions of employment upon the employees is therefore a mandatory subject of negotiations, and a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties covering the period from July 1, 1976 to June 30, 1978. The Commission notes that the Association does not dispute the Board's right to undertake a curriculum review in the abstract, nor does it dispute the Board's decision to require faculty participation therein.

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Appearances:

For the Petitioner, Rubin and Lerner, Esqs.  
(Mr. Frank J. Rubin, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.  
(Mr. Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

On February 25, 1977, the East Brunswick Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the Board and the East Brunswick Education Association (the "Association") is 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").<sup>1/</sup>

<sup>1/</sup> The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations is provided by N.J.S.A. 34:13A-5.4(d), which states: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

The dispute arose after the Board decided to undertake a curriculum review and revision at the high school level on a department by department basis. The parties disagreed as to whether certain aspects of the curriculum review were proper subjects for negotiations. The Board filed this Petition apparently seeking a determination as to whether the decision to embark on the curriculum review was beyond the scope of mandatory negotiations. The Association has filed a grievance and a demand for arbitration regarding this matter.

The Board, in the Petition and its subsequently filed brief, sets forth certain factual contentions. None of the basic facts set forth by the Board was contradicted by the Association in its legal response to the Petition, and, therefore, we will assume these facts to be true for the purpose of this determination.

In the fall of 1976, the Board decided to undertake the aforementioned curriculum review, and by a letter dated October 25, 1976, which was addressed to "all faculty members", the Board set forth certain procedures to be followed by faculty members in carrying out their duties in regard to the curriculum review. Specifically, the letter required in part that a faculty group meet a minimum of one time per month after school to satisfy its responsibilities in regard to the review. The Association in its statement of position indicated that on November 19, 1976, it filed a grievance regarding the curriculum review on behalf of all affected teachers in accordance with the collective negotiations

agreement between the parties.<sup>2/</sup> Thereafter, the Association on January 31, 1977, filed a demand for arbitration with the American Arbitration Association.

The Board in the Petition and in its brief indicated that the issue herein was whether or not the Board had the authority to undertake and require the curriculum review and faculty participation therein without subjecting that decision to negotiations. The Board argued that several specific statutory provisions require school boards to prepare educational programs and that curriculum reviews are needed to accomplish that objective. Moreover, the Board argued that faculty participation was an integral part of the review process. Finally, the Board concluded that the decision to undertake a curriculum review involved an exercise of a management prerogative and it was therefore non-negotiable.

The Association's position herein was set forth in its statement of position and revealed that the instant parties perhaps misunderstood each others' basic positions. The Association does not dispute the Board's right to undertake a curriculum review,

<sup>2/</sup> The parties' collective bargaining agreement is in effect from July 1, 1976 through June 30, 1978. The grievance filed on behalf of the teachers reads as follows: "Employees have been directed to evaluate the complete high school curriculum. An excessive number of after school meetings have (sic) been ordered to complete this task. Certain teachers have been directed to assume leadership positions. Since the high school has recently completed its middle states evaluation, and since curriculum is continually being examined and revised, with recommendations annually submitted to the Board, this directive is whimsical, arbitrary, capricious, useless, repetitive and unnecessary and constitutes harassment of all staff and is an infringement of the personal time of employees."

nor does it dispute the Board's decision to require faculty participation therein. Moreover, the Association concedes, for the purposes of this case, that the Board's decision is one involving a management prerogative and it is thus not subject to arbitration or negotiation. In fact, the Association maintains that had the Board's decision to undertake the curriculum review not required an extension in the length of the school day for those faculty members participating in the review, then the Association would have had no argument with the Board's actions. However, the Association argues that the Board's decision to undergo the curriculum review has effected the participating faculty members by lengthening their school day and the Board should therefore be required to negotiate the impact of its decision on the participating faculty members.

The Association contends that the curriculum review has consumed a great deal of the teachers' time, it has increased their responsibilities, and it has led to an increase in their work day. The Association relied upon two decisions. In Piscataway Twp. Ed. Assn. v. Piscataway Twp. Board of Education,<sup>3/</sup> the Court held that although alteration of the hours of the school day was within school board discretion and was thus non-negotiable, any addition to the work day was a change in terms and conditions and was a proper subject for negotiations. In In re Galloway Twp. Board of

<sup>3/</sup> Super. Ct. App. Div. Docket No. A-499-74, decided December 22, 1975.

Education<sup>4/</sup> this Commission found that the employer was required to negotiate with the teachers association regarding the lengthening of the teachers' work day.

This Commission has considered the question of the impact or effect of certain managerial decisions, which themselves may not be negotiable, on terms and conditions of employment many times and has consistently drawn a distinction between the decisions or actions of an employer which directly concern terms and conditions of employment, and those decisions or actions which do not concern terms and conditions of employment, but which do have an impact or an effect upon them. In the former situation the action or decision itself must be negotiated with the majority representative of the employees, whereas in the latter situation the decision or action need not be negotiated, but its impact or effect upon terms and conditions of employment must be negotiated.<sup>5/</sup>

In applying that rationale to the instant matter there is a question of whether the Board's decision to undertake the curriculum review directly concerns employee terms and conditions of employment or has an impact or effect thereon. In analyzing that question the Commission must strongly emphasize the fact that

<sup>4/</sup> P.E.R.C. No. 77-3, 2 NJPER 254, motion for reconsideration granted, P.E.R.C. No. 77-8, 2 NJPER 284, decision on reconsideration, P.E.R.C. No. 77-18, 2 NJPER 295 (1976), appeal pending App. Div. Docket No. A-483-76.

<sup>5/</sup> The rationale was most fully explained in the Commission's decision, In re Rutgers, The State University, P.E.R.C. No. 76-13, at pages 24-25, 2 NJPER 13, 18 (1975), but had been utilized prior to that decision in In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). It has continued to be the basis for Commission decisions since. See e.g. In re North Plainfield Board of Education, P.E.R.C. No. 76-16, 2 NJPER 49 (1976).

what the Association is raising in this proceeding, and what is being grieved in the Association's grievance, is the negotiability of the effect of the Board's decision to undertake the curriculum review and not the negotiability of the decision itself. The Association specifically stated that it was not seeking to negotiate the Board's decision to undertake the review.

At this juncture it is imperative to point out that in a scope of negotiations proceeding the Commission is strictly limited to addressing the abstract issue of whether the subject matter in dispute is within the scope of negotiations. In this type of proceeding the Commission will not determine whether the facts are as alleged by the grievant, whether the contract provides any defenses to the employer's alleged action, whether the actions of any party constitute unfair practices within the meaning of the Act, or even whether there is a valid arbitration clause in the parties' agreement.<sup>6/</sup>

The Commission determines that to the extent that faculty participation is required in the curriculum review process and to the extent that the implementation of the decision to review and revise the curriculum may have an effect on teachers' working time and the length of their day, the decision does have an impact on teachers' terms and conditions of employment.

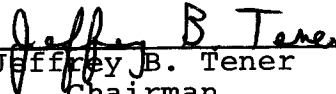
<sup>6/</sup> In re Hillside Board of Ed., P.E.R.C. No. 76-11, at page 9, 1 NJPER 55, 57 (1975); In re County College of Morris, P.E.R.C. No. 77-64, 3 NJPER \_\_\_\_\_ (1977).

Thus, although the decision to undertake the curriculum review and revision is not in dispute nor is it the subject of the Association's grievance, we do determine that the effect, if any, of that decision on employees' terms and conditions of employment is mandatorily negotiable and a dispute with respect thereto may be submitted to arbitration if it is otherwise arbitrable under the parties' agreement.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), N.J.A.C. 19:13-3.7 and the above discussion, the Public Employment Relations Commission hereby determines that to the extent that the managerial decision to undertake a curriculum review and revision and the inclusion of faculty participation therein has an impact on the terms and conditions of employment of the employees involved, the impact of that decision on terms and conditions of employment upon the employees is therefore a mandatory subject of negotiations, and a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties covering the period from July 1, 1976 to June 30, 1978.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.  
Commissioner Hipp abstained and Commissioner Hurwitz was not present.

DATED: Trenton, New Jersey  
June 21, 1977

ISSUED: June 22, 1977