

P.E.R.C. NO. 82-126

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket No. SN-82-41

NORTH BERGEN FEDERATION OF  
TEACHERS,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Chairman grants the request of the North Bergen Board of Education for a restraint of arbitration of a grievance filed by the North Bergen Federation of Teachers concerning the Board's decision not to hire teacher aides and the effect of this decision on line and lunchroom duties absent evidence that the decision effected the teachers' duty free periods or lunch time.

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Appearances:

For the Petitioner, Frank R. Gioia, Esq.

For the Respondent, Sauer, Boyle, Dwyer & Canellis, P.C.  
(Christopher M. Howard, of Counsel)

DECISION AND ORDER

On January 6, 1982, the North Bergen Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board sought to restrain binding arbitration of a grievance the North Bergen Federation of Teachers ("Federation") had filed.

In its Request for Submission of a Panel of Arbitrators, the Federation alleged that the Board violated the collective agreement when it required teachers to perform new line and lunchroom duties at the Robert Fulton Elementary School. The Federation also asserted:

The above charges are at least partially due to the absence of teacher aides (who were not, as they should have been according to contract, hired for the 1981-82 school year.<sup>1/</sup>

<sup>1/</sup> The parties have agreed to stay arbitration pending this decision.

In its brief, the Board contends that the predominant issue underlying the grievance is its decision not to hire teacher aides for the 1981-1982 school year and that any workload increases flowing directly from this decision are non-negotiable. See, e.g., In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979) , certif. den. 81 N.J. 292 (1980) ("Maywood"); In re Kingwood Township Bd. of Ed., P.E.R.C. No. 82-31, 7 NJPER 584 (¶12262 1981) ("Kingwood").

In its brief, the Federation contends that the increase in workload resulting from the failure to hire teacher aides and the assignment of new line and lunchroom duties displaced the teachers' former free period and that this displacement constituted an arbitrable term and condition of employment. See, e.g., In re Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Docket No. A-3380-80 (March 15, 1982) ("Dover").

In its reply brief, the Board reasserted its position that the case predominantly concerned the decision not to hire teacher aides and stated that the workload question was a red herring.

On April 28, 1982, a Commission staff agent requested the parties to submit additional information concerning the nature of the line and lunchroom duties, the time of these duties, their effect on workload, and their effect on otherwise free periods.

The Board forwarded a letter from the Vice-Principal of the Robert Fulton Elementary School. He stated that prior to the 1981-1982 school year, two teachers and four aides had line duty from 8:30 to 8:45 a.m. and 15 minutes at lunch once every two months. The termination of teacher aides necessitated having four teachers perform this duty once a month. Prior to the 1981-1982 school year, one teacher and two aides supervised lunch once every month. The termination of teacher aides necessitated having two teachers supervise lunch once every two weeks. Teachers still receive, without impairment, all "free periods" and the one half hour lunch period.

The letter which the Federation's attorney submitted did not dispute the Vice Principal's factual assertions. The letter does not dispute that the teachers' free periods and lunchtime have not been directly affected, but instead emphasizes that the number of times a teacher must perform line and lunchroom duties has doubled.

In In re North Bergen Board of Education, P.E.R.C. No. 82-109, 8 NJPER \_\_\_\_ (¶ \_\_\_\_ 1982) ("North Bergen"), the Commission recently held that the Board's decision not to hire teacher aides was a non-arbitrable managerial prerogative.<sup>2/</sup> See, In re Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 81-46, 6 NJPER 496 (¶11253 1980); Kingwood. Given the circumstance

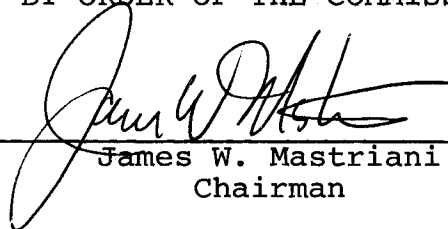
<sup>2/</sup> We did not consolidate that case with the instant one because we needed the additional information described above.

that the lack of teacher aides caused the increase in line and lunchroom duties and that the increases had no impact on the teachers' duty-free periods or lunchtime, we believe that our holding in North Bergen controls here. See also, In re Plainfield Board of Education, P.E.R.C. No. 82-42, 5 NJPER 418 (¶10219 1979); In re Spotswood Borough Bd. of Ed., P.E.R.C. No. 81-109, 7 NJPER 159 (¶12070 1981). Accordingly, I find, acting under authority delegated to the Chairman by the full Commission, that the issue in dispute -- the Board's decision not to hire teacher aides and the effect of this decision on line and lunchroom duties -- predominantly involves the managerial prerogative to determine the work force level and cannot be submitted to arbitration.

ORDER

The request of the North Bergen Board of Education for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
June 10, 1982