P.E.R.C. NO. 86-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LINCOLN PARK BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-86-30

LINCOLN PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration filed by the Lincoln Park Board of Education. The motion sought reconsideration of a previous Commission decision which denied the Board's request to restrain binding arbitration of a grievance filed by the Lincoln Park Education Association which alleged that teachers were wrongfully deprived of preparation time. The Commission holds that the issue of preparation time is a mandatory subject of negotiations.

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Appearances:

For the Petitioner, Feldman, Feldman, Hoffman & Fiorello, Esqs. (Peggy M. O'Dowd, of Counsel)

For the Respondent, Zazzali, Zazzali & Kroll, Esqs. (Paul L. Kleinbaum, of Counsel)

DECISION AND ORDER

On March 3, 1986, the Chairman of the Public Employment Relations Commission, pursuant to authority delegated to him by the full Commission, denied the Lincoln Park Board of Education's ("Board") request to restrain binding arbitration of a grievance which the Lincoln Park Education Association ("Association") filed against the Board. The grievance alleged that teachers were wrongfully deprived of preparation time and stated:

> The elementary school teachers have been directed to be in attendance when their classes are being instructed by a computer teacher. This is in direct violation of past practice and of Article III, section A of the current agreement between the Lincoln Park Education Association and the Lincoln Park Board of Education, as well as other relevant factors.

> Past practice dictates (i.e. art and/or music) that there is no necessity for another teacher to be in attendance when a certified person is instructing.

The Chairman concluded that:

> Teacher preparation time is a mandatorily negotiable subject. Byram Twp. Bd. of Ed. and Byram Twp. Ed. Ass'n, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (App. Div. 1977). In Newark Bd. of Ed. and Newark Teachers Union, Local #481, AFT, AFL-CIO, P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), reconsideration den., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), affmd App. Div. No. A-2060-78 (2/26/80) the Appellate Division held arbitrable a grievance challenging a requirement that classroom teachers be present while their students were instructed by specialists. The grievance filed in Newark also alleged that the teachers had lost preparation time. Newark controls: this grievance relates to a mandatorily negotiable subject and may be arbitrated.

On March 19, 1986, the Board moved for reconsideration. It contends that the Chairman erred in: (1) stating the grievance alleged a violation of the collective negotiations agreement; (2) stating that the Board violated the agreement by decreasing preparation time; (3) not considering the merits of the Association's allegations; (4) not considering the Board's argument that there "has been no change in condition of employment" and (5) not considering that the dispute was not contractually arbitrable. The Board contends three Commission decisions, Fair Lawn Bd. of Ed., P.E.R.C. No. 83-48, 8 NJPER 609 (¶13289 1982); Wanaque Borough Dist. Bd. of Ed., P.E.R.C. No. 82-54, 8 NJPER 26 (¶13011 1981) and East Orange Bd. of Ed., P.E.R.C. No. 79-62, 5 NJPER 122 (¶10071 1979),

support its position that arbitration should be restrained. Finally, it contends that "at the very least" the Commission should decide "whether or not the instant dispute is subject to binding arbitration or whether the same should be subject only to non-binding arbitration."

On March 24, 1986, the Association filed its response opposing reconsideration.

On April 16, 1986, the Board filed a Notice of Appeal to the Appellate Division of the Superior Court.

We deny reconsideration. The Board has not established the requisite "extraordinary circumstances." N.J.A.C. 19:14-8.4; N.J.A.C. 19:13-3.11. First, the Chairman correctly stated that the grievance alleged a violation of the agreement and concerned the issue of preparation time. In any event, however, the Board's five specific exceptions to the Chairman's decision challenge the merits of the Association's contractual grievance. We recognize that the Board has taken the position, in part, that the grievance is not contractually arbitrable; the contract does not provide for binding arbitration and the grievance does not have contractual merit. But we do not have the jurisdiction to decide such questions. We reiterate, as did the Chairman, what our Supreme Court has said concerning such questions:

> 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. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), quoting Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

We decide only whether the subject matter is within the scope of negotiations. That subject matter is teacher preparation time. The Association claims that the Board violated the parties' agreement and past practice when, instead of providing preparation time, it required them to be present while their students were instructed by specialists. Such a grievance may be submitted to binding arbitration under settled principles. Teacher preparation time is mandatorily negotiable. E.g., Kingwood Twp. Bd. of Ed., P.E.R.C. No. 85-94, 11 NJPER 219 (¶16084 1985). Newark Board of Education and Newark Teachers Union, Local #481, AFT, AFL-CIO, App. Div. Docket No. A-2060-78 (decided February 26, 1980), aff'g P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), relied on by the Chairman, is applicable. We merely amplify. There, the parties' contract provided:

> Employees shall have those periods during which specialists cover their classes set aside for preparation. All elementary school employees shall have at least two (2) fifty (50) minute preparation periods each week.

The union alleged the Board violated this agreement when it "requir[ed] them to remain with their classes while the classes were instructed by specialists, such as music or art teachers." The

Appellate Division agreed with the Commission's determination that the matter was mandatorily negotiable:

> Here, PERC's holding that preparation periods are negotiable terms and conditions of employment is well within its expertise, not arbitrary or capricious and entirely consistent with existing case law.

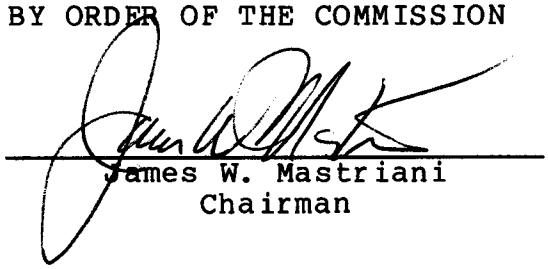
Newark is dispositive. The Board's reliance on other Commission decisions is misplaced. Fair Lawn and Wanaque involve the Board's prerogative to make assignments. East Orange involves the Board's prerogative to abolish positions and make necessary reassignments pursuant to a reorganization of personnel resources. This case, in contrast, involves the mandatorily negotiable issue of the amount of preparation time.

Finally, we note that the Board has filed a Notice of Appeal to the Appellate Division. We understand this filing divests us of jurisdiction to reverse or vacate a previous order. R. 2:9-1; State of New Jersey (Public Defender), P.E.R.C. No. 86-93, 12 NJPER 199 (¶17076 1986); Borough of Atlantic Highlands, P.E.R.C. No. 83-104, 9 NJPER 137 (¶14065 1983), rev'd on other grounds, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984).

ORDER

The Motion for Reconsideration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decisionl. None opposed. Commissioners Hipp and Reid abstained. Commissioner Horan was not present.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986