

EDUCATION ASSOCIATION OF :
MORRIS, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
BOARD OF EDUCATION OF THE : DECISION
MORRIS SCHOOL DISTRICT, :
MORRIS COUNTY, :
 :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning Education Association contended that the District's scheduling of physical education teachers' lunch periods either before or after the normal pupil lunch periods was violative of *N.J.A.C.* 6:3-3.2. The District had rescheduled the lunch periods in order to implement a daily mid-day fitness program. The collective bargaining agreement between the parties had no provision relating to lunch for elementary school teachers.

The ALJ concluded that the District had not acted in any manner contradictory to existing law or to its negotiated agreement with the union. The ALJ further concluded that the District might to a certain degree accommodate some of the union concerns as to the teacher lunch schedules, but those matters were strictly within the discretion and managerial prerogative of the District; the District can establish such schedules as it deems appropriate within the confines of the existing regulation. Petition was dismissed.

The Commissioner adopted the findings and the determination in the Initial Decision as his own.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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_____:

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions and the Board’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.¹

Upon careful and independent review of the record of this matter, the Commissioner concurs that petitioner has failed to demonstrate that the Board’s actions in scheduling its teachers’ lunch periods in order to accommodate a mid-day fitness program were outside the scope of its discretionary authority, or otherwise improper.² Accordingly, the Initial Decision is affirmed for the reasons expressed therein.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: November 18, 2002
Date of Mailing: November 19, 2002

¹ Both the exceptions and the reply essentially reiterate arguments that were presented in papers previously considered and summarized by the Administrative Law Judge.

²Notwithstanding this conclusion, the Commissioner notes that *N.J.A.C.* 6:11-6.1(b) permits teachers with elementary endorsements to devote no more “than one-half time to teaching art, music, health, home economics, industrial arts, or *physical education* in elementary grades.***” (emphasis added)

³This decision, as the Commissioner’s final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.