

L.D. NO. 90-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN CITY BOARD OF EDUCATION,
Public Employer,

-and-

Docket No. L-90-6

OCEAN CITY EDUCATION ASSOCIATION,
Employee Organization.

Appearances:

For the Public Employer, Rocco Carri Associates
(Rocco S. Carri, President)

For the Employee Organization, Selikoff & Cohen, Esqs.
(Steven R. Cohen, Esq.)

LAP DECISION

The Ocean City Board of Education and the Ocean City Education Association seek a decision on the negotiability of two contract provisions. They agreed in a memorandum of understanding for a successor contract to submit the dispute to the Commission's Litigation Alternative Program. They also agreed to be bound by this decision.

The disputed contract language states:

Article 7 - Classroom Safety

- A. The class size in the Ocean City School District shall not exceed the number of student stations available within a given classroom.
- B. Every class should be conducted in a standard classroom.

- C. Sub-standard classrooms should be used only under extreme emergency conditions.

Article 13 - Involuntary Transfers and Reassignments

- A. Notice of an involuntary transfer or reassignment shall be given to teachers as soon as practicable, and except in cases of emergency, not later than June 1. It is understood that the period between academic years (summer) is understood to be an emergency time period.
- B. When an involuntary transfer or reassignment is necessary, the individual teachers shall be afforded the protection of any rules, regulations, State statutes, laws, and provisions of the Constitution of New Jersey and/or the United States.
- C. An involuntary transfer or reassignment shall be made only after a meeting between the teacher involved and the Principal, at which time the teacher shall be notified of the reason therefore. In the event that the teacher objects to the transfer or reassignment at this meeting, upon the request of the teacher, the Superintendent shall meet with him. The teacher may, at his option, have an Association representative present at such meeting. Should any of the teachers' rights cited in Section B be violated, said teachers may have the right to institute a grievance.

The Board argues that Article 7(a) is not mandatorily negotiable because it deals with class size. It argues that classroom standards and the use of substandard classrooms are preempted and that Articles 7(b) and (c) are ultra vires. N.J.A.C. 6:22-2.5; N.J.A.C. 6:22-3.1. The Board also argues that Article 13(a) is not mandatorily negotiable to the extent it imposes time restrictions on the Board's right to transfer teachers. The Board concedes that Article 13(b) is mandatorily negotiable, but claims that Article 13(c) improperly restricts the Board to making involuntary transfers only after a meeting.

The Association argues that Article 7 is simply a contractual commitment to provide a safe work place and therefore is mandatorily negotiable. It argues that regulations on classroom standards and the use of substandard classrooms do not preempt negotiations but rather provide a minimum level of benefits which can be enlarged by negotiation. It further argues that Article 13 deals with "procedural aspects of the decision to transfer" and is therefore mandatorily negotiable.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

School boards have the prerogative to establish class size. Article 7(a) interferes with that prerogative and is therefore not mandatorily negotiable. Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987); Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18035 1986); cf. Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 84 (¶17323

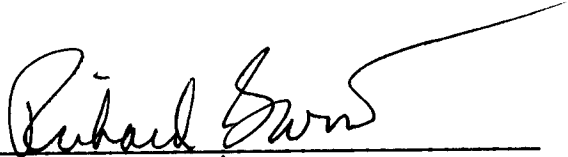
1986). The general language of sections 7(b) and (c) limits the Board's right to use "substandard" facilities for educational purposes. The clauses are not limited to teacher safety and may interfere with instructional needs. See Burlington Community Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976) aff'd 152 N.J. Super. 12 (App. Div. 1977); Delaware Tp. Bd. of Ed.

Article 13, sections (a) and (c) are procedural and do not interfere with the Board's ability to transfer or establish the criteria for transfers. Trenton Bd. of Ed., P.E.R.C. No. 88-139, 14 NJPER 488 (¶19190 1988); Plainfield Bd. of Ed., P.E.R.C. No. 84-134, 10 NJPER 346 (¶15159 1984); South River Bd. of Ed., P.E.R.C. No. 83-135, 9 NJPER 274 (¶14126 1983), aff'd App. Div. No. A-4669-8212 (2/29/84).

ORDER

1. Sections (a), (b) and (c) of Article 7 are not mandatorily negotiable and should not be included in the parties' successor agreement.

2. Sections (a), (b) and (c) of Article 13 are mandatorily negotiable and should be included in the parties' successor agreement.


Richard C. Gwin
Commission Designee

Dated: March 23, 1989
Trenton, New Jersey