

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION  
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

FAIRFIELD BOARD OF EDUCATION

-and-

FAIRFIELD EDUCATION ASSOCIATION

Docket No. CO-87-266  
LAP-87-12

DECISION

On March 12, 1987, the Fairfield Education Association ("Association") filed an unfair practice charge alleging that the Fairfield Board of Education ("Board") violated subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq ("Act"). The Association alleges that the Board adopted a 1987-88 school calendar in which it unilaterally lengthened the work day for staff on the days before the Thanksgiving and Christmas recesses. The Association claims that the Board changed the dismissal time from 1:00 p.m. to 3:10 p.m. on those two days.

On May 12, 1987, the parties participated in an exploratory conference with a Commission staff agent. They later agreed to submit this dispute to the Commission's Litigation Alternative Program (L.A.P.) and that this decision would be final and binding.

On June 11, 1987 I conducted a hearing. The parties introduced exhibits and argued their positions. The exhibits that I have considered are the 1986-1988 collective negotiations agreement between the Board and the Association (J-1); the Board's school calendars for the years 1974-75 through 1986-87, excluding the 1976-77 school year (J-2); the Board's 1987-1988 school calendar (J-3); and a series of memos from the Superintendent to the parents of Fairfield school pupils changing the dates or dismissal times of the last school day because snow days were not used during the school year (B-1).

The parties agree that the Board possesses the managerial prerogative to establish a school calendar. This dispute involves the Board's decision to schedule full school days before the Thanksgiving and Christmas vacations. The Association claims that the Board unilaterally changed the staff's terms and conditions of employment, and cites South Hackensack, P.E.R.C. No. 81-118, 7 NJPER 124 (¶ 12104 1981) ("South Hackensck"). The Association relies on the calendars submitted into evidence as proof of a practice that school days prior to the Christmas and Thanksgiving recesses were one session days with 1:00 p.m. dismissal times.

The Board argues that it is inappropriate to consider only the days before the Christmas and Thanksgiving recesses in determining the practice. The Board asserts that when the calendar as a whole is considered the practice demonstrated is that the Board has historically had discretion to reschedule school days prior to

vacations. The Board also argues that this case is distinguishable from others dealing with similar issues because the collective negotiations between the parties (J-1) does not contain a retention of benefits clause. Finally, the Board disputes the Association's assertion that the day before the Christmas recess has historically been a one-session day.

The school calendars for the years 1974-75 through 1986-87 reveal a consistent practice of shortened school days on the day before Thanksgiving. The early dismissal time has been either 12:30 p.m. or 1:00 p.m. The calendars also reveal that the staff never worked a full school day on December 23.

In its 1987-1988 school calendar, the Board has scheduled both the Wednesday before Thanksgiving and December 23 as full-session days.

Similar facts were analyzed by the New Jersey Supreme Court in Bd. of Ed. of the Woodstown-Pilesgrove Reg. Sch. Dist., 81 N.J. 582 (1980) ("Woodstown-Pilesgrove"). The Commission, applying Woodstown Pilesgrove in South Hackensack stated:

At issue herein is the Board's change in the 1980-81 school calendar and resulting extension of the teachers work day on the days immediately preceding the Thanksgiving and Christmas recesses. These days were half-day sessions for a number of prior years, but were changed to full day sessions by the Board for the school year currently in progress.

The context of the dispute is identical to that present in [Woodstown-Pilesgrove] and accordingly resolution of the negotiability issue would depend on whether on balance, the dominant theme of the dispute, is the Board's educational policy reasons for making the change or the direct effect on the teacher's work and welfare.

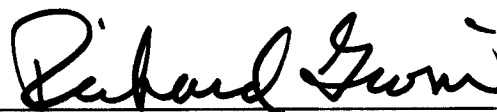
Here the Board does not assert any compelling educational policy reasons for its decision to lengthen the school days before the Thanksgiving and Christmas recesses. Instead, it disputes that a practice exists and distinguishes this case by the absence of a "retention of benefits" clause in its contract with the Association.

I conclude that the Association has demonstrated a past practice, that the Board's 1987-88 calendar modifies that practice and that the absence of a retention of benefits clause in the parties contract does not relieve the Board of its negotiations obligation.

A contractual waiver of a negotiations obligation must be clear and unequivocal. The Commission has consistently held that the absence of a retention of benefits clause does not amount to a waiver of the obligation to negotiate. The contract between the parties contains no clear language reserving to the Board the right to unilaterally determine the dismissal time for staff on days before holidays. Thus I find no contractual defense to the Board's conduct. See Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd app. Div. Dkt No. A 1818-80T1; Wharton Bd. of Ed., P.E.R.C. No. 83-35, 8 NJPER 570 (¶13263 1982); State of New Jersey, P.E.R.C. No. 77-40 3 NJPER 78 (1977). Compare Randolf Tp. Bd. of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982).

I also must reject the Board's argument that its conduct was consistent with past practice. The memos submitted by the Board (B-1) reveal only that it had shortened or eliminated school days at the end of the school year when snow days had not been used. I find this practice to be distinct from mid-year schedule changes. I also conclude that the failure of the Association to grieve the Board's prior changes in the length of school days does not constitute a waiver of its right to challenge the Board's subsequent decision to unilaterally alter terms and conditions of employment.

I conclude that the Board is obligated to negotiate the change in the dismissal time on the days preceeding the Thanksgiving and Christmas recesses. Woodstown-Pilesgrove.



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Richard C. Gwin  
Commission Designee

DATED: June 17, 1987  
Trenton, New Jersey