P.E.R.C. NO. 76-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

FAIR LAWN BOARD OF EDUCATION,
Petitioner,

-and- Docket No. SN-17

FAIR LAWN ADMINISTRATIVE AND SUPERVISORY ASSOCIATION, LOCAL 34, SASOC, AFL-CIO,
Respondent.

FAIR LAWN BOARD OF EDUCATION,
Respondent,

-and- Docket No. CO-61

FAIR LAWN ADMINISTRATIVE AND SUPERVISORY ASSOCIATION, LOCAL 34, SASOC, AFL-CIO,
Charging Party.

SYNOPSIS

The Commission determines that a Board of Education's decision to reduce the work year of school principals from twelve to ten months is not a required subject for collective negotiations, but that the impact of such decision on the terms and conditions of the principals' employment must be negotiated with the majority representative upon demand.

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Charging Party.

For the Petitioner, Messrs. Jeffer, Walter, Tierney, Hopkinson & Vogel, Esqs.
(Mr. Reginald F. Hopkinson, of Counsel)

For the Respondent, Messrs. Frankel and Greenwald, Esqs.
(Mr. Leonard Greenwald, of Counsel)

DECISION AND ORDER

This matter comes before the Public Employment Relations Commission for a determination as to whether a matter in dispute between the Fair Lawn Board of Education (the "Board") and the Fair Lawn Administrative and Supervisory Association, Local 34, SASOC, AFL-CIO (the "Association" or "FLASA") is within the scope of collective negotiations. This decision determines the issues raised in the Scope of Negotiations Petition only, pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-1, et seq.[1/]

1/ N.J.S.A. 34:13A-5.4(d) provides, in pertinent part, that: (continued)

The case initially arose as an Unfair Practice Charge filed by the Association against the Fair Lawn Board of Education (Docket No. CO-61). The Charge was filed on March 20, 1975 and alleged that the Board had violated the New Jersey Employer-Employee Relations Act, as amended, specifically N.J.S.A. 34:13A-5.4(a)(5), by unilaterally changing the work year of certain unit members from twelve months to ten months and by reducing their compensation and other fringe benefits without negotiating with the Association. The Charge further alleged a violation of N.J.S.A. 34:13A-5.4(a)(1) and (2) in that the Board wrote a letter to the Association officers requiring that they meet with the Board to discuss public statements made by the Association pertaining to the proposed reduction in the work year.[2/]

The Board filed a response to the Charge denying any violations of the Act and included therein a "Request for determination as to whether the matter in dispute is within the Scope of Negotiations." See N.J.S.A. 34:13A-5.4(d). The Board requested PERC to determine that the reduction of the work

1/ (cont.) "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

2/ N.J.S.A. 34:13A-5.4(a) provides "Employers, their representatives or agents are prohibited from
(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by this act.
(2) Dominating or interfering with the formation, existence or administration of any employee organization...
(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit or refusing to process grievances presented by the majority representative..."

year of certain supervisory and administrative personnel from twelve months to ten months is not subject to a duty to negotiate as it is not a term or condition of employment within the meaning of the Act; and that the effect of such a reduction is governed by Title 18A and is to be administered exclusively by the Commissioner of Education.

An exploratory conference was held with the parties on May 22, 1975 (see N.J.A.C. 19:14-1.6(c)), at which time agreement was reached that much of the dispute, if not all, could be resolved by having the Commission determine the duty, if any, of the Board to negotiate the reduction in the work year. The parties stipulated certain facts upon which the scope questions would be determined, and the matter was docketed on May 30, 1975 as the within Scope of Negotiations Petition. By letter dated June 27, 1975 the Executive Director of the Commission confirmed the agreement of the parties to submit the within matter as a Scope of Negotiations Petition, ordered the consolidation of the Scope Petition with the Unfair Practice Charge previously filed, and confirmed the understanding that the issues raised in the Unfair Practice Charge would be held in abeyance pending the disposition of the Scope of Negotiations Petition.[3/] Briefs were submitted by both sides and oral argument before the Commission was requested by the Board. Oral arguments by

3/ It was the hope of the parties as well as the Commission that a determination of the scope issue would enable the parties to reach an agreement, thus making the continued processing of the Unfair Practice Charge unnecessary. It is, however, recognized by the Commission that a Scope of Negotiations Petition does not afford the potential for as extensive remedial relief as an Unfair Practice Charge, nor does this Petition address itself to all the issues raised in the initial charge. While the Commission is hopeful that the parties will be able to reach an agreement based upon this determination, the Association is free to request that the processing of the Unfair Practice Charge be resumed.

attorneys for both sides were heard by the Commission on July 21, 1975.[4/]

The case was submitted on the basis of the following stipulated facts which set out the essential factual background.

1. Fair Lawn Administrative and Supervisory Association, Local 34, SASOC, AFL-CIO (FLASA) and the Fair Lawn Board of Education (Employer) are parties to a collective bargaining agreement effective as of July 1, 1974 and expiring June 30, 1975. (This agreement was attached to the Stipulations and made a part of them).

2. On or about November 1, 1974 FLASA and the Employer began negotiations for a successor collective bargaining agreement.

3. On February 27, 1975 the employer adopted a decision that thirteen positions previously established as twelve month positions, be changed to ten month positions effective July 1, 1975.

4. Subsequently, the Employer revised this decision and determined that seven positions (the seven elementary school principals) previously established as twelve month positions be changed to ten month positions, effective July 1, 1975.

5. FLASA and the Employer have not negotiated this issue in the context of the collective negotiations which began November 1, 1974. FLASA and the Employer have not negotiated this issue in any other context.

6. In May 1974 the Employer reduced the work year of ten administrative and supervisory personnel.

7. The differences in compensation and fringe benefits between twelve month personnel and ten month personnel are enumerated in the contract attached hereto.[5/]

4/ Commissioner Frederick T. Hipp was not present for the oral arguments.

5/ The 1974-1975 contract between the parties provided for the computation of compensation and fringe benefits of ten month employees by taking 91% of the equivalent step on the 12 month salary schedule. It also provided for taking a pro-rata portion of earned vacation time. The parties are in dispute as to whether this provision was intended to be applicable only to the employees already on a ten month basis or to those employees to be switched to ten month salaries subsequent to the time the contract was negotiated. As the Commission views the matter before it, that factual dispute need not be resolved to reach our determination.

The parties also agreed that the above set of facts was stipulated for the purpose of the resolution of the scope proceeding only and not for any other proceedings which might take place.

The dispute thus involves the Board's decision to reduce the work year of the seven elementary school principals in the Fair Lawn system from twelve months to ten months. The Association contends that this decision is a term and condition of the principals' employment and is therefore a required subject of negotiations. The Board responds that the decision to reduce the work year was made for economic and educational reasons and, as such, it is a management decision not subject to the duty to negotiate.

The Board does concede that the impact of that decision, its effect on salaries, fringe benefits and other terms and conditions of the principals' employment, is negotiable; however, the Board contends that provisions in the 1974-75 agreement illustrate that it has negotiated this impact in the past and is only following its pre-existing policies and contract provisions with regard to reducing administrative personnel from twelve to ten month employment. The Board argues further that since, in its view, the decision as to these seven principals is only a continuation of an existing policy and does not represent a new rule or a modification of an existing rule, there is no new duty to negotiate the impact.[6/]

6/ The parties had agreed upon three issues to be submitted to the Commission as part of this scope proceeding. The formulation of those issues was intended to answer the questions relating to the proposed new or modification of existing rules arguments. It became apparent at oral argument that if those specific issues were to be resolved, additional factual information would have to be elicited, perhaps by resort to an evidentiary hearing. However, as the above discussion will indicate, the Commission does not believe that that argument is relevant or essential to a resolution of the underlying scope issue and has therefore not addressed itself specifically to those issues.

As the Commission views the case, it need not resolve the factual disputes which are raised by these defenses. The stipulated facts indicate that the old contract expired on June 30, 1975 and that the reduction in the work year commenced on July 1, 1975, the presumed effective date of a successor contract. It is thus immaterial whether the reduction in the work year and its effect on salary and fringe benefits is a change in past policies or contract provisions or a continuation of existing practices. The existing contract having come to an end, all its provisions, unless specifically agreed otherwise, terminate. All topics which are terms and conditions of employment, regardless of their inclusion in past contracts or policies, are subject to the duty to negotiate if raised by either party during the course of collective negotiations.1/ Thus, if either the decision to reduce the length of the work year of the elementary school principals or its impact is a term and condition of employment, either or both would be within the scope of negotiations and mandatorily negotiable if raised by either party.

1/ N.J.S.A. 34:13A-5.3 sets forth the duty to negotiate in the following manner: "A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment." (emphasis added)

The duty to negotiate terms and conditions of employment is independent of and in addition to the duty to negotiate proposed new rules and modifications of existing rules governing working conditions. Regardless of past policies and contract provisions, items which are terms and conditions of employment, as that term is used in the Act, are within the scope of negotiations during collective negotiations for a contract.

Additionally, although the provisions of the agreement may terminate, the employer may be required to maintain existing terms and conditions of employment while negotiating a successor agreement. See In re Piscataway Township Board of Education, P.E.R.C. No. 91, 1 N.J.P.E.R. ____ (1975).

The Fair Lawn Board of Education has always conceded that the impact of the decision was within the scope of negotiations, and we agree. However, it argued that the impact of the decision was not negotiable at this time because it had previously been negotiated in the 1974-75 contract. As the above discussion indicates, that argument, even if true, would only have merit if the change had occurred during the period of that contract. It would not be applicable to the period of any successor contract, and is thus not relevant to this case. The parties have stipulated that the negotiations for the successor contract, which began November 1, 1974, have not included negotiations on the matters under consideration herein. We, therefore, hold that the impact of the decision to reduce the length of the work year of the elementary school principals is within the scope of collective negotiations and that the Fair Lawn Board of Education must negotiate upon demand with the Fair Lawn Administrative and Supervisory Association the impact of that decision, i.e., it must negotiate the effect of that decision on the principals' terms and conditions of employment.

The obligation of the Board to negotiate the actual decision to reduce the principals' work year, as opposed to the impact of that decision, presents a different situation. It is uncontested that the Fair Lawn Board of Education has the statutory power to make such a decision. N.J.S.A. 18A: 10-1, N.J.S.A. 18A:11-1, N.J.S.A. 18A:27-4, N.J.S.A. 18A:28-9. The issue, thus, is whether the New Jersey Employer-Employee Relations Act, as amended, imposes a duty upon the Board to negotiate this particular decision with the Association. As discussed earlier, N.J.S.A. 34:13A-5.3 imposes the duty

upon the public employer to negotiate with the majority representative of the employees in an appropriate unit. However, that duty does not extend to every decision that a public employer makes. It is limited to "proposed new rules and modifications of existing rules governing working conditions" and to the obligation to "negotiate in good faith with respect to grievances and terms and conditions of employment."

Items which are not terms and conditions of employment are not subject to the duty to negotiate. Similarly, matters of inherent managerial authority and/or educational policy are outside the scope of collective negotiations. It cannot be disputed that, at times, decisions which are made for managerial and/or educational reasons will have an effect on employees, but that does not necessarily mean that the decision itself must be negotiated.

Such a situation is presented herein. The Fair Lawn Board of Education made a decision for managerial and educational reasons that it is no longer necessary to employ elementary school principals during the summer months. The Board believes that certain cost savings can be achieved by making the principals ten month employees;[8/] additionally, it feels that the educational and administrative work of the principals can be completed in the

8/ While it does not appear in the stipulations, it developed at oral argument that the principals are the only professional employees who are employed at the elementary schools during the summer months. Apparently the decision to reduce the principals to ten month employment was really a decision to close the schools completely in the summer. This would be a clear management decision. However, that fact was not stipulated and the decision as presented to the Commission did not take that form.

shorter period of time. This Commission does not interpret the New Jersey Employer-Employee Relations Act, as amended, as mandating that the decision must be negotiated with the Association as the majority representative of the employees.[9/]

Therefore, the Commission holds that the decision to reduce the work year of the elementary school principals from twelve to ten months effective July 1, 1975, is not a required subject of negotiation. However, the impact of that decision on the terms and conditions of their employment is a required subject of negotiations and the Commission holds that the Fair Lawn Board of Education, upon demand, must negotiate with the Fair Lawn Administrative and Supervisory Association the impact of the decision to reduce the period of employment of the seven elementary school principals.[10/]

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), the Public Employment Relations Commission hereby orders that the Petitioner, Fair Lawn Board of Education, upon demand of the Respondent, Fair Lawn Administrative and Supervisory Association, Local 34, SASOC, AFL-CIO, shall negotiate the impact upon terms

9/ In holding that the decision is not mandatorily negotiable, we do not hold that the Board could not agree to negotiate that decision. In the absence of a statutory prohibition, negotiations and any ensuing agreement would appear to be permissible and enforceable. See N.J.A.C. 19:13-3.7.

10/ Orders of this Commission pursuant to the power granted in a scope of negotiations proceeding, N.J.S.A. 34:13A-5.4(d) are prospective only in that they determine that a particular matter in dispute is or is not within the scope of collective negotiations. Affirmative relief necessary to remedy any past failure to negotiate the matter must be sought in an unfair practice proceeding, assuming the alleged harm cannot be remedied in the subsequent negotiations. See N.J.S.A. 34:13A-5.4(c).

and conditions of employment of the decision to reduce the work year of the seven elementary school principals from twelve to ten months.

BY ORDER OF THE COMMISSION

John F. Lawson

Acting Chairman

Dated: September 11, 1975
Trenton, New Jersey