

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE  
BOROUGH OF RIDGEFIELD,  
Petitioner,

Docket No. SN-76-1

-and-

RIDGEFIELD TEACHERS ASSOCIATION,  
Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board of Education disputing the negotiability and arbitrability of the adoption of a school calendar, the Commission determines that, pursuant to either Chapter 303 or Chapter 123, the adoption of a school calendar is a major educational determination and is not a mandatory subject of negotiations. However, the adoption of such a calendar does not in itself fix the number of working days for teachers. The number of days of work is a term and condition of employment and is a mandatory subject of negotiations, though such negotiations are to take place in light of the calendar. Since it appears that the arbitration demand in this case relates only to an alleged increase in the number of working days for teachers, the interim restraint of arbitration previously issued is removed and the parties may submit the dispute to arbitration if it is otherwise arbitrable under the terms of their agreement.

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Appearances

For the Petitioner, Bartlett and Turitz, P.A.  
(Mr. Stanley Turitz, of Counsel)

For the Respondent, Goldberg, Simon & Selikoff, Esqs.  
(Mr. Theodore M. Simon, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") by the Board of Education of the Borough of Ridgefield (the "Board") seeking a determination as to whether a certain matter in dispute with the Ridgefield Teachers Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").<sup>1/</sup> The Board, in its petition,

<sup>1/</sup> The Commission's authority to determine whether the matter in dispute is within the scope of collective negotiations is provided by N.J.S.A. 34:13A-5.4(d), which states: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make 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."

maintains that the dispute relates to the adoption of the school calendar for the 1975-76 school year and, more specifically, to a grievance filed by the Association allegedly attempting to challenge the adoption of that school calendar. The Board seeks a permanent restraint of arbitration<sup>2/</sup> on the theory that the dispute relates to a non-negotiable, and therefore non-arbitrable matter of educational policy within the Board's exclusive managerial prerogative.

The Board originally attempted to restrain the arbitration demanded by the Association by applying to the Superior Court of New Jersey, Chancery Division on the ground that the matters in controversy were inherent managerial prerogatives and therefore not subject to arbitration. It was the opinion of the Superior Court judge, the Honorable George B. Gelman, that the passage of Chapter 123 of the Laws of 1974, specifically, N.J.S.A. 34:13A-5.4(d), now placed the jurisdiction to pass upon the matters raised by the Board in this Commission, and he therefore refused to entertain the Board's application.<sup>3/</sup> The within proceeding was then instituted by the Board.

Upon filing the Scope Petition, the Board requested a temporary restraint of arbitration pending the Commission's final

<sup>2/</sup> The arbitration demanded by the Association was pursuant to the grievance procedure set forth in the parties' collectively negotiated agreement. The arbitration called for by this agreement is advisory only, and therefore any determination made by an arbitrator is non-binding on either party.

<sup>3/</sup> This summary of the Superior Court action is taken from the Board's Scope Petition.

Neither party has requested an evidentiary hearing in this matter and there does not appear to be any dispute as to the factual allegations set forth in any of the pleadings or briefs submitted.

decision. The matter was originally set down for a hearing at which the Association was to show cause why the restraint should not be granted. However the Association waived its right to such a hearing and the temporary restraint of arbitration was granted by the Commission's named designee and is still in effect.

The Board raises two arguments in its Petition. It argues primarily that the promulgation of a school calendar is a major educational policy within the exclusive prerogative of a board of education, and as a secondary matter it argues that the matter of school calendar is expressly reserved to the Board by the terms of the contract. With regard to this secondary argument this Commission has stated on numerous occasions that it will not allow the scope of negotiations procedure to supercede the authority of the arbitrator to interpret contracts. The use of the grievance-arbitration process is favored by the Act, see N.J.S.A. 34:13A-5.3, and is totally consistent with its public policy, see N.J.S.A. 34:13A-2. The Commission, when rendering scope of negotiations determinations similar to the one herein, assumes that the dispute is otherwise arbitrable pursuant to the parties' agreement. Arguments based upon the contract arbitrability of the controversy should be directed to the arbitrator or the courts, not the Commission. See In re Hillside Board of Education, P.E.R.C. No. 76-11, pps. 9-11, 1 NJPER 55, 57 (1975); In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). We therefore limit our analysis of this case to the Board's first argument that school calendar is a managerial prerogative, not a mandatory subject of negotiations, and pursuant to

Dunellen Board of Education v. Dunellen Education Association,  
64 N.J. 17 (1973) is thus non-arbitrable.<sup>4/</sup>

The Association however does not argue that the promulgation of a school calendar is a mandatorily negotiable term and condition of employment. They argue instead that within the context of that calendar the number of days that the employees, in this case the teachers, are required to work is a term and condition of employment. Their grievance therefore does not relate to the adoption of a school calendar establishing the dates when schools will be open or how many days students will be required to attend school but rather to the fact that one result of the Board's action was to allegedly increase the number of scheduled working days for unit personnel from 183 to 185 and that the increase violated the collectively negotiated agreement then in effect between

<sup>4/</sup> In Dunellen the Supreme Court held that the consolidation of department chairmanships was a major educational policy determination within management's prerogatives. The Court analyzed the New Jersey Employer-Employee Relations Act as it related to the Education Law and determined that Section 8.1 of the statute, as it existed under Chapter 303, meant that disputes with respect to a major educational policy were to be resolved by the Commissioner of Education and could not be submitted to an arbitrator.

The Association contends in its brief, though it is not the basis for its argument, that the passage of Chapter 123 of the Public Laws of 1974 has modified the Dunellen decision to make a matter subject to arbitration if it is either permissively or mandatorily negotiable. Regardless of the merit of this argument it must be pointed out that this dispute arose pursuant to a collectively negotiated agreement effective from July 1, 1974 to June 30, 1976. The Appellate Division of the Superior Court has recently held that the Chapter 123 amendments to the Act do not apply to contracts entered into prior to the effective date of the amendments. Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Superior Court of New Jersey, Appellate Division, Docket No. A-3334-74, decided May 5, 1976. Thus with respect to contracts in existence on January 20, 1975 the analysis of the arbitrability of a given subject must be determined within the context of the law established prior to the amendments, including Dunellen.

the parties.<sup>5/</sup>

As outlined above it would appear that the positions of both parties are correct. The negotiability of this subject matter has been dealt with by both this Commission and the courts of New Jersey in prior decisions. Simply stated the adoption of a school calendar has been held to be a major educational determination and as such was a managerial prerogative and not a mandatory subject of negotiations. However the adoption of such a calendar does not in itself fix the number of working days of the individual employees. The number of days of work are terms and conditions of employment and are mandatorily negotiable.

In Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1973) the New Jersey Supreme Court held that the issue of college calendar was not a mandatory subject of negotiations as it involves a major educational determination.

The Court observes, however, that:

"(W)hile the calendar undoubtedly fixes when the college is open with courses available to students, it does not in itself fix the days and hours of work by individual faculty members or their work loads or their compensation. These matters, the defendant readily acknowledges, are mandatorily negotiable under the Act though the negotiations are to be conducted in light of the calendar." at pg. 12.

<sup>5/</sup> The position of the Association is substantiated by the statement of the grievance and the demand for arbitration, copies of both of which were attached to the Association's brief. In the letter setting forth the grievance to the Board of Education the Association states the relief sought as "In light of past practice, the existing agreement and applicable law, the Ridgefield Teachers Association seeks a reduction in the number of working days to no more than 183 such days." (emphasis added).

In the demand for arbitration which was submitted following the Board's denial of the grievance the relief sought is stated as "Restoration of a maximum of 183 teaching days for the 1975-76 school year."

Within a week of the Burlington County College decision the Appellate Division relied upon it to decide an issue involving the adoption of a 32 week budgetary calendar by the Board of Higher Education for Rutgers University. Rutgers Council v. N.J. Board of Higher Education, 126 N.J. Super 53 (App. Div. 1973). The Court said:

"With regard to the 32-week budgetary calendar, we observe, as did our Supreme Court in Burlington County College Faculty Ass'n v. Board of Trustees, Burlington County College, 64 N.J. 10, decided November 20, 1973, and reversing 119 N.J. Super. 276 (Law Div. 1972), that while the calendar undoubtedly fixes when the University is open with courses available to students, it does not in itself fix the days and hours of work by individual faculty members, or their workloads or their compensation. These matters are mandatorily negotiable under the Act, although the negotiations are to be conducted in the light of the calendar." at pg. 68.

And in a Superior Court, Chancery Division decision in April 1974, the Court reiterated the distinction between the adoption of a school calendar for students and the number of working days of the teachers and drew an analogy from that to resolve a dispute as to the arbitrability of a particular matter before it.

In Board of Education of West Orange v. West Orange Education Association, 128 N.J. Super. 281 (1974) the issue concerned the arbitrability of grievance over the increased workload of department chairpersons resulting from the Board's decision to eliminate homeroom periods for students and other changes in scheduling. The Court cites Burlington, as holding that calendar is a major educational policy and not negotiable, but that days and hours of work by individual faculty members or their work loads were mandatorily negotiable and were to be negotiated in the light

of the calendar. The Court relies on this analysis to hold that the Board's decision to delete homeroom period from the school schedule is not arbitrable, but that the changes that the Board plans to make in the work schedule of the department chairmen within the framework of the new schedule do relate to terms and conditions of their employment and are arbitrable. The Court states that this latter issue is clearly severable from the Board's right to program the format of the school day.

The Appellate Division has also passed upon the arbitrability of a dispute similar to the one herein. In an unreported decision decided in December of 1974 a Board of Education attempted to restrain the arbitration of a grievance contesting a Board directive requiring guidance counselors to work additional days at the end of the school year on the ground that the issuance of the directive involved the establishment of a school calendar. Board of Education of Lower Camden County Regional High School v. Lower Camden County Regional Education Association, Superior Court of New Jersey, Appellate Division, Docket No. A-1193-73, decided December 19, 1974. The Appellate Division affirmed the lower court's ruling that the requirement to work the extra days did not involve school calendar but rather concerned a change in customary working hours and thus concerned terms and conditions of employment and was a proper subject for arbitration.<sup>6/</sup>

This Commission has also considered the issue of calendar and reached a conclusion which leads to the same result

<sup>6/</sup> All these court decisions pre-date the passage of Chapter 123, so their holdings are completely applicable to the resolution of the dispute herein. See footnote 4.



as the court decisions discussed above. In the Commission's Rutgers decision, In re Rutgers, the State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976) the Commission held that the issue of school calendar is a permissive, but not required, subject of negotiations, but that the impact of the calendar on terms and conditions of employment of unit members (when they work, how long they work, their workload, etc.) is a required subject of negotiations. P.E.R.C. No. 76-13 at 19, 2 NJPER at pg. 17.

From the foregoing, it can be determined that the adoption of the school calendar by the Ridgefield Board of Education was not a required subject of negotiations and therefore not arbitrable under a contract negotiated pursuant to Chapter 303 of the Public Laws of 1968, however a change in the number of working days of teachers resulting from the Board's implementation of that calendar is a required subject of negotiations and arbitrable. Since the grievance of the Association herein appears to seek only a restoration of the prior number of working days it is an arbitrable dispute if otherwise arbitrable under the parties' agreement.

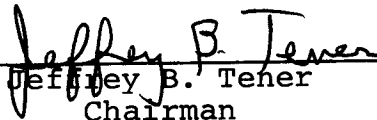
ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7 the Public Employment Relations Commission hereby determines that the subject of school calendar is a major educational policy and is a permissive, but not a required subject of negotiations; and is therefore not arbitrable pursuant to the parties' contract herein which was entered into prior to January 20, 1975. However any change in the number of working days which occurred as a result of the

implementation of the school calendar is a required subject of negotiations and is arbitrable.

The Public Employment Relations Commission therefore denies the permanent restraint of arbitration sought by the Board of Education and hereby removes the interim restraining order previously issued. The matter of an alleged increase in the number of working days may be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' agreement.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Commissioners Hipp and Hurwitz did not participate in this matter. Chairman Tener and Commissioners Hartnett and Parcels voted for the Decision.  
Commissioner Forst was not present.

DATED: Trenton, New Jersey  
August 24, 1976

ISSUED: August 25, 1976