

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH RIVER BOARD OF EDUCATION,

Petitioner,

Docket No. SN-79-11

-and-

SOUTH RIVER EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a Scope of Negotiations Determination, the Commission addressed various issues with respect to a reduction in force of tenured teachers. Citing the Supreme Court decision in State Supervisory Employees Association, 78 N.J. 54 (1978), the Commission reaffirmed its previous analysis that if not precluded by statute, there is a duty to negotiate terms and conditions of employment. Specifically, the Commission held that procedural matters of a RIF, if not covered by statute, are mandatorily negotiable and that a procedure for breaking ties among tenured staff in a RIF situation is covered by statute and regulations and to that extent is not negotiable.

Additionally, the Commission rules on the negotiability of the effect of a RIF upon the reduced staff still working and upon tenured staff actually rified. Citing its decision in In re Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER 377 (1977), the Commission held the former to be mandatorily negotiable and the latter, to the extent not covered by statute, (e.g. reemployment rights) to be mandatorily negotiable.

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Appearances

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld, of Counsel)

For the Public Employer, Wilentz, Goldman & Spitzer, Esqs.
(Mr. Alfred J. Hill, of Counsel)

DECISION AND ORDER

On September 21, 1978, a Petition for Scope of Negotiations Determination was filed by South River Board of Education (the "Board") with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the South River Education Association (the "Association") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). All briefs were received by October 26, 1978.

The issues raised are:

(1) Whether the procedure to be used in effectuating a reduction in force (RIF) of tenure staff is negotiable.

(2) Whether the procedure to be used in breaking ties among tenured staff with identical seniority in a RIF is negotiable.

(3) Whether the impact of the RIF upon those rified and upon those unit members still teaching is negotiable.

The Association relies on the cases of State of New Jersey v. State Supervisory Employees Assn., 78 N.J. 54 (1978) and Bd. of Ed. of Township of Piscataway v. Piscataway Maintenance and Custodial Assn., 152 N.J. Super. 235 (App. Div. 1977) in support of its position that all three issues are negotiable. The Association contends that since N.J.S.A. 18A:28-9^{1/} is a general statute, and not a specific statute as to the issues presented, the Commission should find that these subjects are negotiable terms and conditions of employment.

The Board's position is that N.J.S.A. 18A:28-9 expressly provides that a board of education may accomplish a RIF without negotiations and that the general provisions of our Act do not compel negotiations where there is a specific provision in the Education Law authorizing unilateral action by a board of education.

This Commission has previously dealt with similar issues in Cinnaminson Twp. Bd. of Ed. and Cinnaminson Teachers' Assn., P.E.R.C. No. 78-46, 4 NJPER 79 (Para. 4039, 1978), appeal pending App. Div. Docket No. A-2682-77. Therein, the Commission stated

1/ N.J.S.A. 18A:28-9 provides as follows: "Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article."

that "...parties can and must negotiate concerning terms and conditions of employment, but only to the extent that such negotiations do not lead to any results which are inconsistent with provisions of specific statutes regarding terms and conditions of employment." 4 NJPER at 83. This analysis of the interrelationship between the duty to negotiate terms and conditions of employment under the Act and other statutes has been accepted by the New Jersey Supreme Court in State of New Jersey v. State Supervisory Employees Assn., 78 N.J. 54 (1978). With this as background, we turn to a consideration of the specific issues in dispute.

The first issue concerns the negotiability of the procedure to be used in effectuating a RIF of tenure staff. If the issue is whether there is a duty to negotiate the number of positions to be eliminated,^{2/} the method to be used in selecting those to be riffed^{3/} or the establishment of standards with respect to seniority,^{4/} the answer is that these matters are specifically covered by statute and therefore are not negotiable. See State Supervisory Employees Assn., supra. Our reading of the statement of the issue in dispute suggests that it concerns the actual selection of tenured teachers to be riffed. If, however, the issue is the negotiability of other procedural matters that are not covered by statute, then the Commission reiterates its position in Cinnaminson Twp. Bd. of Ed. v. Cinnaminson Education Association, P.E.R.C. No.

^{2/} N.J.S.A. 18A:28-9.

^{3/} N.J.S.A. 18A:28-10.

^{4/} N.J.S.A. 18A:28-13.

78-46, 4 NJPER 79 (Para. 4039, 1978) that procedural matters relating to terms and conditions, if not covered by statute, are mandatory subjects of negotiations.^{5/}

The second issue concerns the negotiability of a tie breaking mechanism when the seniority of two or more teachers is equal. The Education Law provides that the Commissioner of Education shall establish seniority standards^{6/} and that a board of education may request the Commissioner for an advisory opinion concerning the applicability of the standards to particular situations.^{7/} The standards have been promulgated. N.J.A.C. 6:3-1.10. Therefore, to the extent that the statute and these regulations cover this issue, the matter is not mandatorily negotiable, having been preempted by specific statutory or regulatory enactment which removes discretion from the employer in these areas.^{8/}

The third issue posed has two parts. These are (1) the negotiability of the effect of the RIF on the terms and conditions of employment upon those unit members still teaching and (2) the negotiability of the effect of the RIF on the terms and conditions of employment upon tenured staff rified.

^{5/} In Cinnaminson, the Commission found two notice provisions of a RIF article of the collective negotiations agreement - one concerning advance notice to the majority representative of any anticipated RIF and the other relating to notice to the affected teachers - to be mandatory subjects of negotiations. See, also, Burlington County College and Burlington County College Faculty Assn., P.E.R.C. No. 79-3, 4 NJPER 305 (Para. 4154 1978).

^{6/} N.J.S.A. 18A:28-13.

^{7/} N.J.S.A. 18A:28-11.

^{8/} State of New Jersey, supra

In In re Maywood Bd. of Ed., P.E.R.C. No. 78-23, 3 NJPER 377 (1977), Appeal pending, App. Div. Docket No. A-1648-77, the Commission concluded:

"...that the Board did not violate the Act by refusing to negotiate with the Association regarding the decision to RIF certain employees, but that the Board did violate the Act by refusing and failing to negotiate the impact or effect of that decision on the remaining employees' terms and conditions." (footnote omitted) at p. 379

Here again, there is no duty to negotiate with regard to the decision to RIF certain teachers. What is mandatorily negotiable is the effect, if any, of the RIF on the terms and conditions of employment of that reduced staff.^{9/}

Maywood, supra, also analyzed the negotiability of the effect of the RIF on the terms and conditions of employment of those tenured employees rified. The Commission concluded that a board of education must negotiate this effect, but that such negotiations must not contravene provisions of the Education Law. One statute that does serve to block negotiations in this area is N.J.S.A. 18A:28-12. It provides that tenured teaching staff members shall be placed on a preferred reemployment list. The parties may not

^{9/} If the reason for the RIF is economic reasons, it would appear likely that the effect of the RIF is that a smaller staff would have to perform the work that a larger staff had previously performed. If the reason for the RIF is a reduction in the number of pupils, it is possible that there is no effect. At this time, there is no reason for the Commission to determine whether there is an effect or not.

negotiate so as to reach a result contrary to this section or any other specific statutory provision. With this limitation, the issue of the effect of the RIF upon the terms and conditions of employment of tenured employees rified is mandatorily negotiable.

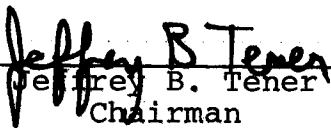
In summary, the Commission determines that the procedure to be used in effectuating a reduction in force of tenured staff is negotiable only to the extent that this subject is not preempted by statute (see N.J.S.A. 18A:28-9, 10, and 13); that the procedure to be used in breaking ties among tenured staff with identical seniority in a reduction in force is preempted by specific statute (see N.J.S.A. 18A:28-11 and 13) and regulation (N.J.A.C. 6:3-1.10) and is, therefore, nonnegotiable; and that the effect of a reduction in force on the terms and conditions of employment of unit members is mandatorily negotiable but the effect of a reduction in force on tenured teachers who are rified is negotiable only to the extent not preempted by statute (see N.J.S.A. 18A:28-12).

ORDER

Consistent with the above determinations the Commission hereby permanently enjoins the South River Education Association from proceeding to arbitration with respect to the matters not found to be mandatorily negotiable. Additionally the request of the South River

Board of Education for a restraint of arbitration with respect to those matters herein found to be mandatorily negotiable is denied and the parties may proceed to arbitration thereon to the extent that the agreement between these parties provides for arbitration.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained and Commissioner Graves was not present.

DATED: Trenton, New Jersey
December 14, 1978
ISSUED: December 15, 1978