

P.E.R.C. NO. 90-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GARFIELD BOARD OF EDUCATION

Petitioner,

-and-

Docket No. SN-89-80

GARFIELD FEDERATION OF TEACHERS

Respondent,

SYNOPSIS

The Public Employment Relations Commission rules on the negotiability of several articles which the Garfield Federation of Teachers seeks to include in a successor collective negotiations agreement with the Garfield Board of Education. Held mandatorily negotiable are provisions on employee discipline, office space for the majority representative, evening meetings, and employee uniforms. Held not mandatorily negotiable are provisions on student grading, school calendar, correction of standardized tests and use of class registers, and teacher qualifications.

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Appearances:

For the Petitioner, Ruderman & Glickman, Esqs.
(Mark Ruderman, of counsel)

For the Respondent, Dwyer & Canellis, Esqs.
(Paul J. Burns, of counsel)

DECISION AND ORDER

On June 8, 1989, the Garfield Board of Education petitioned for a scope of negotiations determination. The Board disputes the negotiability of several articles which the Garfield Federation of Teachers seeks to include in a successor collective negotiations agreement.

The Federation is the majority representative of a unit of all teaching personnel. This dispute arose during negotiations for a successor to the contract which expired on June 30, 1989.

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 403-404]

ARTICLE 4 - "Employee Rights"

C. No employee shall be disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

D. Whenever any employee is required to appear before the Superintendent of Schools or his designee, Board or any committee, member, representative, or agent thereof concerning any matter which could adversely affect the continuation of that employee in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have a representative of the Federation present to advise him and represent him during such meeting or interview. Any suspension of an employee as a result of any formal charge shall be without pay until the time of determination of that charge. In the event the employee is ultimately exonerated of the charge, the employee shall be made whole retroactive to the day of suspension.

Section C is mandatorily negotiable. We have held that a just cause provision does not have to specify the disciplinary disputes which are legally arbitrable. Delran Bd. of Ed., P.E.R.C. No. 87-155, 13 NJPER 578 (¶18212 1987). Should the Federation seek binding arbitration of a disciplinary dispute which is preempted by an alternate statutory appeal procedure, the Board may seek a restraint of arbitration. Absent a more specific claim of preemption, the underlined portion of Section D is also mandatorily negotiable. See Essex Cty., P.E.R.C. No. 87-156, 13 NJPER 579 (¶18213 1987); Essex Cty., P.E.R.C. No. 87-6, 12 NJPER 605 (¶17227 1986).

ARTICLE 4 - "Employee rights,"

E. The employee shall maintain the right and responsibility to determine grades within the grading policy of the Garfield School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. Any revision of grades shall be determined after a conference with the staff member and principal. Final decision shall be made by the Board.

Student grading predominantly relates to educational policy and is not mandatorily negotiable. Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986).

ARTICLE 5 - "Federation Rights"

H. The Federation shall be provided without cost to it, adequate office space in the high school building at a location and of a description to be mutually agreed upon for one hour after school each day.

In Kearny Tp., P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980), we held mandatorily negotiable a provision granting the majority representative the monthly use of a meeting hall. The Board argues that the allocation of facilities and furnishings is a managerial prerogative. It distinguishes Kearny by the degree to which a provision on daily space infringes on educational policy, but it does not provide any specifics as to its limited available space as in N.J. College of Medicine & Dentistry, P.E.R.C. No. 81-113, 7 NJPER 228 (¶12099 1980). This provision also does not significantly interfere with the Board's educational mission or instructional needs nor does it require capital expenditures. See Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513, 515 (¶20213 1989). It is mandatorily negotiable.

ARTICLE 6 - "Work Year"

A. The in-school work year shall commence not later than five (5) days after Labor Day.

In conjunction with Article 6B, which sets the length of the teacher work year, this clause affects the setting of the school calendar and is not mandatorily negotiable. Burlington Cty. Coll. Faculty Ass'n v. Burlington Cty. Coll., 64 N.J. Super. 10 (1974). Contrast Piscataway Tp. Bd. of Ed., P.E.R.C. No. 77-37, 3 NJPER 72 (1977), aff'd 164 N.J. Super. 98 (App. Div. 1978) (decision to alter work year is mandatorily negotiable). Cf. Sayreville Ed. Ass'n v. Sayreville Bd. of Ed., P.E.R.C. No. 78-41, 4 NJPER 70 (¶4034 1978), aff'd App. Div. Dkt. No. A-2732-77 (2/6/79).

ARTICLE 7 - "Hours and Load"

F. Meetings which take place after the regular in-school work day and which require attendance shall not be called on Fridays or on any day preceding any holiday, or other day upon which employee attendance is not required at school, except in an emergency.

Citing Berkeley Heights Bd. of Ed., P.E.R.C. No. 89-61, 15 NJPER 23 (¶20008 1988), the Board asserts that it has a prerogative to schedule evening parent-teacher conferences. But the aim of this provision is to protect the employees' interest in enjoying holiday and weekend time. This provision does not prevent the employer from holding evening meetings nor does it restrict the number or content of meetings. On balance, it is mandatorily negotiable.

ARTICLE 8 - "Non-Teaching Duties"

- B. Teachers shall not be required to correct standardized tests used at the direction of the Board or the Administration.
- D. The Board agrees that teachers will not be required to maintain individual class registers.

A board has a prerogative to assign teachers non-teaching duties which relate to student safety or control, or which are incidental to their normal teaching tasks. See, respectively, In re 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); Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987). Both provisions involve non-teaching duties incidental to teaching and are not mandatorily negotiable.

ARTICLE 11 - "Assignment"

- A. Employees in the school system shall be given prime consideration when vacancies or new positions occur. They shall be posted on the bulletin board provided for herein.

An employer cannot be required to favor current employees for vacancies or promotions. See Byram; North Bergen Tp. Bd. of Ed., 141 N.J. Super. 97 (App. Div. 1976). However, procedurally, it may agree to consider employees before considering non-employees. Cf. Snitow v. Rutgers University, 103 N.J. 116 (1986); Joint Mtg. of Essex and Union Ctys., 15 NJPER 496 (¶20204 1989); Camden Cty., P.E.R.C. No. 88-115, 14 NJPER 350 (¶19135 1988); Toms River Bd. of Ed., P.E.R.C. No. 87-162, 13 NJPER 588 (¶18219 1987); Eastampton Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14127 1983); Newark Bd. of Ed., P.E.R.C. No. 80-2, 5 NJPER 283 (¶10156 1979). Since this provision does not appear to obligate the employer to promote or assign from within, it is mandatorily negotiable. See Piscataway Tp. Bd. of Ed., P.E.R.C. No. 87-151, 13 NJPER 508 (¶18189 1987).

ARTICLE 11 - "Assignment"

C. In order to assure that pupils are taught by teachers working within their area of competence, teachers shall be assigned to teach in areas for which they hold a standard certificate issued by the New Jersey State Board of Education.

A board has the prerogative to determine which teachers are qualified to teach particular subjects and classes. Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144 (1978). Should a particular assignment allegedly violate laws or regulations governing teacher certification, the affected staff member may petition the Commissioner of Education for redress. That issue and this clause pertain to educational policy and are not mandatorily negotiable.

ARTICLE 14 - "School Facilities"

B. The Board shall provide gym uniforms for physical education teachers, smocks for art and home economic teachers, laboratory coats for

laboratory science teachers, shop coats for vocational and industrial art teachers. Proper laundering service for all of said items shall be provided without charge to teacher.

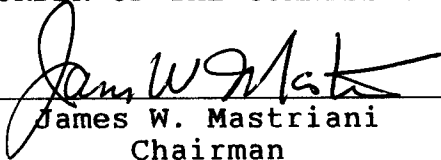
Providing uniforms and equipment is mandatorily negotiable when, as here, the uniforms are related to the employees' safety and comfort. The cost of and responsibility for maintaining such items are also mandatorily negotiable. Bor. of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER (¶20125 1989); Bor. of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); Town of Secaucus, P.E.R.C. No. 86-19, 11 NJPER 512 (¶16180 1985); Tp. of Egg Harbor, P.E.R.C. No. 86-20, 11 NJPER 518 (¶16181 1985).

ORDER

A. These articles are mandatorily negotiable: Articles 4, Section C and D (last two sentences); Article 5, Section H; Article 7, Section F; Article 11, Section A (first sentence); Article 14, Section B.

B. These articles are not mandatorily negotiable: Article 4, Section E; Article 6, Section A; Article 8, Sections B and D; and Article 11, Section C.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Smith and Johnson voted in favor of this decision in its entirety. Commissioner Ruggiero voted in favor of the decision but voted against the decision with respect to Article 11A. Commissioner Bertolino voted in favor of the decision but voted against the decision with respect to those items found not mandatorily negotiable. Commissioner Reid abstained from consideration of this decision.

DATED: Trenton, New Jersey
November 20, 1989
ISSUED: November 21, 1989