P.E.R.C. NO. 92-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-91-27

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several successor contract proposals of the Willingboro Education Association. Provisions on extra compensation for extra work, filling of vacancies, resolving complaints against teachers, and discussion of the school calendar are mandatorily negotiable. A proposal concerning class size is not mandatorily negotiable. The Commission does not decide the negotiability of the Association's health insurance proposal or the Board's progressive discipline proposal because there is no present negotiability dispute with respect to those proposals.

P.E.R.C. NO. 92-48

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-91-27

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, James P. Granello, attorney

For the Respondent, Selikoff & Cohen, attorneys
(Joel S. Selikoff, of counsel)

DECISION AND ORDER

On October 30, 1990, the Willingboro Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that several successor contract proposals of the Willingboro Education Association are not mandatorily negotiable and a determination that its proposal on progressive discipline is mandatorily negotiable.

The parties have filed briefs and exhibits. These facts appear.

The Association represents the Board's teachers, secretaries and clerks. The parties entered into a collective negotiations agreement effective from July 1, 1987 to June 30, 1990. During successor contract negotiations, the Board asserted that several provisions in the just-expired contract were not

mandatorily negotiable and could not be included in a successor contract. It also submitted its own progressive discipline proposal. This petition ensued.[1/]

Article VII, Section B of the prior contract provided:

> Where there are exceptional demands upon a particular individual for time over and beyond the regular work day as hereinbefore set forth, the Superintendent or the Superintendent's designee may work out with the individual concerned an agreement for compensatory time off or adequate compensation. The individual involved may be represented by the Association in any discussions hereunder with the Superintendent or the Superintendent's designee.

Extra compensation for extra work is a mandatorily negotiable subject. See, e.g., Montville Tp. Bd. of Ed., P.E.R.C. No. 86-118, 12 NJPER 372 (¶17143 1986), aff'd App. Div. Dkt. No. A-4545-85T7 (3/23/87), certif. den. 108 N.J. 208 (1987). This provision is therefore mandatorily negotiable in general. But the Board objects that it may not delegate authority to the Superintendent to determine compensation and that compensation agreements with individual employees violate the Employer-Employee Relations Act. The proposal is not mandatorily negotiable to the extent it would circumscribe the Board's right to designate its own management representative. See, e.g., Upper Saddle River Bd. of Ed., P.E.R.C. No. 88-58, 14 NJPER 119 (¶19045 1987). But the Association may lawfully agree to permit individual employees to work out

---

1/ The sick leave issue contested in the petition has been resolved.

compensation arrangements. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).

Article X, Section A provided:

> 2. All vacancies in teaching promotional positions caused by death, retirement, discharge, resignation, or by the creation of new promotional positions, which vacancy the Board decides to fill, shall be filled pursuant to the following procedure:
>
> * * *
>
> 3. ...Such vacancy shall be filled on the basis of fitness for the vacant position; provided, however, that when one or more applicants request the same position other qualifications being equal, seniority in the district shall prevail.

We disagree with the Board's assertion that subsection A.2. compromises its prerogative to determine if a vacancy should be filled; that subsection applies only to vacancies which the Board decides to fill. We also disagree with the Board's assertion that subsection A.3. compromises its prerogative to determine the criteria for filling vacancies; seniority is a factor only if the Board unilaterally determines that other qualifications are equal. Eastampton Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983); Willingboro Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13042 1982).

Article XVI, Sections A and H had specified that the Board would pay the full cost of a health insurance program including Blue Cross, Plan 365, Blue Shield Prevailing Fee Plan, and Rider J. The Board asserted that this provision, if included in a successor contract, would interfere with its ability to select the carrier so long as it did not change the level of benefits. See, e.g., City of

Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). The Association then substituted this proposal:

> For the term of this agreement, the Board shall pay the full cost of a health insurance program for employees in the unit which program contains benefits the same or substantially similar to the Blue Cross/Blue Shield Prevailing Fee Plan, Plan 365 and to further include a Rider J type benefit. For employees, the aforesaid insurance program shall include the employee and the employee's immediate family. The major medical coverage shall contain those features set forth on the plan summary attached hereto as Schedule E.
>
> Nothing contained herein shall deny the right of the Board to determine the carrier for the above plans provided it demonstrates to the Association that any change in carriers will not reduce the range and levels of benefits and services. (Emphasis supplied)

The Board has not challenged the negotiability of this provision so we need not address it. We therefore hold that there is no present negotiability dispute.

Article XVII, Section A.6 concerned procedures for resolving complaints against a teacher. When the Board disputed its negotiability, the Association proposed this revised provision:

> In every case in which a unit member is subject to an accusation, the Administration shall provide to the unit member, notice of the accusation, its contents therein, and the identity of the individual making the accusation. Additionally, the Administration shall provide the unit member the opportunity to be heard prior to including the accusation in one's personnel file or in the inclusion of same in one's evaluation. Where possible, the procedure shall include the opportunity to be heard in the presence of the accuser.

The Board concedes that this proposal is mandatorily negotiable, except to the extent it requires it to reveal the identity of accusers who wish to be anonymous. We believe that requirement is also mandatorily negotiable. In North Plainfield Bd. of Ed., P.E.R.C. No. 83-120, 9 NJPER 208 (¶14096 1983), we stated that teachers could seek procedural protections which do not bind third parties and which allow teachers to know the substance of complaints and to respond fully. This proposal does not require complainants to participate in any meetings and simply gives the accused information which may prove vital to a response. Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985). As in Franklin Tp., we recognize that the employer may initiate an investigation based on an anonymous complaint. But if the employer is going to charge the employee with misconduct, it may legally agree to reveal the name of the complainant so the accused employee may respond.

Article XXVII provided that the Association and administration would jointly try to develop an annual school calendar for submission to the Board and that, absent agreement, each would submit its own. In New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980), we found not mandatorily negotiable a provision mandating prior consultation before the establishment of a calendar even though the Board retained the right to establish the final calendar. Since then, the Supreme Court has squarely addressed the negotiability of a clause requiring discussion with the majority representative before implementation of

a managerial decision. The Court held that a public employment contract may include a provision reciting an agreement to discuss decisions to subcontract if a layoff or job displacement will result and if the proposed subcontracting is based on solely fiscal considerations. Local 195, IFPTE v. State, 88 N.J. 393, 409 (1982).

More recently, we addressed a provision requiring the superintendent to meet with the association to discuss and consider the calendar. Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987). The provision did not explicitly preserve the board's right to set the calendar. Relying on New Milford and without discussing Local 195, we held that the provision was not mandatorily negotiable. In the same case, we held mandatorily negotiable a clause requiring that teachers be consulted about the selection of textbooks, library books, and other instructional equipment. We found that the latter consultation clause permitted teacher input on matters within their expertise and which could affect their performance. In order to reconcile these holdings and to conform them to Local 195, we now reconsider the negotiability of clauses requiring discussion of school calendars.

Establishing the school calendar in terms of when school begins and ends is not mandatorily negotiable. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); cf. Burlington Cty. College Faculty Ass'n v. Burlington Cty. College, 64 N.J. 10 (1973). But it is "obvious that establishing the number of school days and the hours of instruction

per school day impacts upon teachers' terms and conditions of employment." 81 N.J. at 593. Because of that impact and because non-binding input would not significantly interfere with the Board's prerogative to set the calendar, we find that clauses requiring input, discussion or consultation are mandatorily negotiable. New Milford and Plainfield are overruled to the extent they are inconsistent with this determination. We emphasize that although a board can bind itself to enter into discussions over the school calendar, it cannot enter into any enforceable agreements setting the calendar. Cf. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 86 (1978).

Article XXVIII concerned class size. When the Board disputed its negotiability, the Association proposed a provision requiring the Board to consider:

> (a) [reducing] class size to the optimum educational size as soon as the number of classrooms and pupils in the district permit.
>
> (b) [setting] the direction of the educational program...by a goal of twenty-five (25) pupils per average class.

The Board asserts that this provision would significantly interfere with its prerogative to base class size on the factors it believes most appropriate. We agree. See, e.g., Plainfield Bd. of Ed; North Hunterdon Bd. of Ed., P.E.R.C. No. 85-100, 11 NJPER 233 (¶16090 1985); Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980).

With respect to the Board's progressive discipline proposal, there is no present negotiability dispute. The Association does not assert that any aspects of this proposal are not mandatorily negotiable. It has simply not agreed to the proposal.

ORDER

Article VII, Section B is mandatorily negotiable except to the extent it would circumscribe the Board's right to designate its own negotiations representative.

Article X, Subsections A.2. and A.3. are mandatorily negotiable.

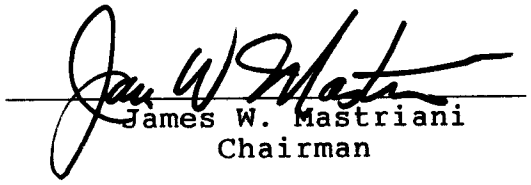
Article XVII, Subsection A.6. is mandatorily negotiable.

Article XXVII is mandatorily negotiable.

The Association's revised proposal concerning class size is not mandatorily negotiable.

There is no present negotiability dispute with respect to the Association's health insurance proposal or the Board's progressive discipline proposal.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: October 17, 1991
Trenton, New Jersey
ISSUED: October 18, 1991