P.E.R.C. NO. 80-139

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKETTSTOWN EDUCATION ASSOCIATION,

Petitioner,

-and- Docket No. SN-80-81

HACKETTSTOWN BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a jointly filed scope of negotiations proceeding, concludes, consistent with prior Commission and judicial decisions, that work year, and more specifically in this case, the abolition of 12 and 11 month positions and the creation of 10 month positions, is a mandatory subject for collective negotiations.

P.E.R.C. NO. 80-139

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKETTSTOWN EDUCATION ASSOCIATION,

Petitioner,

-and- Docket No. SN-80-81

HACKETTSTOWN BOARD OF EDUCATION,

Respondent.

Appearances:

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

For the Respondent, Sirkis & Schweighardt, Esqs.
(Mr. Arthur Sirkis, of Counsel)

DECISION

On February 1, 1980 a Petition for Scope of Negotiation Determination was jointly filed with the Public Employment Relations Commission by the Hackettstown Education Association (the "Association") and the Hackettstown Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the parties is a mandatorily negotiable term and condition of employment within the meaning of the Employer-Employee Relations Act (the "Act"). Briefs were filed by both parties by February 21, 1980.

This petition was filed at the direction of the Honorable Reginald Stanton, J.S.C. The issue for determination is whether or not the actions of the Board in abolishing 12 and 11 month positions and in creating 10 month positions are mandatorily negotiable.

The Association alleges that a reduction of the work year is a mandatorily negotiable term and condition of employment. In support of this, the Association cites Piscataway Twp. Bd. of Ed. v. Piscataway Principals Assn, 164 N.J. Super. 98 (App. Div. 1978) and New Brunswick Bd. of Ed. v. New Brunswick Ed. Assn, Inc., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), mot. for recon. denied, P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), affm'd App. Div. Docket No. A-2450-77 (4/2/79).

While it acknowledges the holdings of Piscataway, supra, and New Brunswick, supra, the Board alleges that in those matters the boards did not, in fact, reduce personnel by abolition of positions. Here, the Board maintains that it did abolish positions in conformity with N.J.S.A. 18A:28-9 for reasons of economy. Hence, the Board argues that the abolition of the 12 month and 11 month positions is a managerial prerogative of the Board and it is not mandatorily negotiable.

This decision is being issued by the undersigned on behalf of the Commission in accordance with the authority delegated by the Commission pursuant to N.J.S.A. 34:13A-6(f).

The argument of the Board is not convincing. The Appellate Division in Piscataway, supra, answered the arguments raised by the Board here:

> The Board here argues that economy motivated the action complained of and that there is no material difference between the Board's right to cut staff and the right to cut months of service of staff personnel where the economy motive is common to both exercises. We disagree.

> While cutting staff pursuant to N.J.S.A. 18A:28-9 would be permissible unilaterally without prior negotiations, see Union Cty. Bd. of Ed. v. Union Cty Teach. Ass'n, 145 N.J. Super. 435 (App. Div. 1976), certif. den. 71 N.J. 348 (1977), but cf. State of New Jersey v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), there cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year (subject to normal vacations), and without prior negotiation with the employees affected, is in violation of both the text and the spirit of the Employer-Employee Relations Act. Cf. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978).
>
> 161 N.J. Super. at 101.

The argument by the Board that the 12 and 11 month positions were officially abolished pursuant to N.J.S.A. 18A:28-9 and that new 10 month positions were thereafter created, rather than a simple reduction in months of service, is a distinction without a difference.

The holding of the Appellate Division cannot be emasculated simply by the method advanced by the Board herein. The Commission has consistently held[1/] that the length of the

1/ Piscataway Twp. Bd. of Ed. v. Piscataway Principals Assn, supra; New Brunswick Bd. of Ed. v. New Brunswick Ed. Assn, Inc., supra; Burlington County College Faculty Assn. v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973) and In re Board of Education of the Borough of Old Tappan, P.E.R.C. No. 80-74, 5 NJPER 551 (¶10286 1979).

work year (or the abolition of 12 and 11 month positions and the creation of 10 month positions) is a mandatory term and condition of employment.[2/]

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
April 30, 1980

2/ No order is issued herein as Judge Stanton has retained jurisdiction over this matter.