

P.E.R.C. NO. 87-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAURICE RIVER TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-95

MAURICE RIVER TOWNSHIP
SUPPORTIVE STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain proposals made by the Maurice River Township Supportive Staff Association to the Maurice River Township Board of Education in successor contract negotiations. The Commission finds that the following proposals are mandatorily negotiable: employee safety and use of reasonable force to protect employees; reimbursement of legal fees of employee who successfully defends or wins dismissal of an action before the Board or the Commissioner of Education; sick leave; union leave and a non-discrimination clause. The Commission finds that the following proposals are not mandatorily negotiable: subcontracting prohibition; promotion preference for present employees and involuntary transfer and reassignment restriction.

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Appearances:

For the Petitioner, Milstead & Ridgway, P.C.
(Rushton H. Ridgway, of counsel)

For the Respondent, Selikoff & Cohen, P.A.
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On June 5, 1986, the Maurice River Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board asserts that, in successor contract negotiations, the Maurice River Township Supportive Staff Association ("Association") seeks to retain several provisions of the predecessor agreement which are not negotiable.

The parties have submitted briefs and documents. The following facts appear.

The Association is the majority representative of a unit of the Board's supportive staff employees. The Board and the Association are negotiating a new contract to succeed one which expired June 30, 1986. The Board is a Civil Service employer.

The Supreme Court in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), established the test for determining negotiability:

[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]

The Board asserts that paragraphs A through D of an article entitled Protection of Employees appearing on page 10 are not mandatorily negotiable.

Paragraph A states that employees shall not have to perform tasks or work under conditions which would endanger their health, safety or well-being. This provision deals directly with employee safety and is mandatorily negotiable. Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); Union Cty., P.E.R.C. No. 84-23, 9

NJPER 588 (¶14248 1983).^{1/} We caution, however, that a decision to refuse an assignment cannot be based upon speculation or subjective beliefs, but only on a compelling threat to personal welfare.

Paragraph B allows an employee to use reasonable force to protect himself and other persons or property from attack, to quell a violent disturbance or to obtain possession of weapons or other dangerous objects, as permitted by law. The paragraph paraphrases the applicable statute, N.J.S.A. 18A:6-1.^{2/} The provision is not in conflict with the statute, does not interfere with the Board's managerial prerogative and is directly related to employee safety. It is mandatorily negotiable.

^{1/} See also N.J.S.A. 34:13A-26 which states:

the safety and health of public employees in the workplace is a primary concern in which employers and employees should cooperate to enforce standards to assure a healthy and safe workplace.

^{2/} The statute reads: No person employed or engaged in a school or educational institution, whether public or private shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable and necessary: (1) to quell a disturbance, threatening physical injury to others; (2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil; (3) for the purpose of self-defense; and (4) for the protection of persons or property....

Paragraph C provides that the Board shall reimburse any employee who successfully defends or wins dismissal of an action before the Board or the Commissioner of Education which may affect the employee's job or salary status. The first sentence of Paragraph D obligates the Board to give "full support including legal and other assistance for any assault upon the employee while acting in the discharge of his duties, for the purpose of protecting his employment." Both of these paragraphs are mandatorily negotiable. They provide a benefit to employees which is greater than the minimum protection provided by pertinent statutes (N.J.S.A. 18A:16-6 and 18A:16-6.1) and they are not in conflict with these statutes. See Trenton Bd. of Ed., P.E.R.C. No. 85-62, 11 NJPER 25, 26-27 (¶16013 1984).

The second sentence of paragraph D preserves an employee's existing sick leave when absent as a result of a job-related assault or injury. The third sentence of the same paragraph requires work-related injury leave to continue beyond Worker's Compensation until the employee's complete recovery.^{3/} We find these clauses mandatorily negotiable. See New Brunswick Bd. of Ed., P.E.R.C. No. 86-8, 11 NJPER 453 (¶16159 1985) and Jersey City Bd. of Ed., P.E.R.C. No. 86-62, 11 NJPER 718 (¶16252 1985).

^{3/} We interpret complete recovery to be the ability to return to work.

Paragraph G of an article labeled "Association Rights and Privileges" bars the Board from giving work to a contractor which would reduce the current work force. The clause restricts subcontracting and is not mandatorily negotiable. See Local 195. Paragraph H grants a paid leave of absence to the Association's president during his term of office. This clause is mandatorily negotiable. See City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26, 28-29 (¶17010 1985); cf. Querques v. City of Jersey City, 198 N.J. Super. 566, 568 (App. Div. 1985).

Paragraph D of an article entitled "Extended Leaves of Absence" provides in the second sentence of the subparagraph labeled "Benefits" that an employee returning from an extended leave^{4/} will be placed in the same or a substantially equivalent position to the one held when the leave commenced. This clause is not mandatorily negotiable. New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980).

The contract's "Miscellaneous Provisions" contains a non-discrimination clause, Paragraph A. This clause is mandatorily negotiable, Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983), although not all disputes under it may be submitted to binding arbitration.

^{4/} The article covers military, maternity and "other leaves of absence without pay...granted by the Board for good reason."

Paragraph B of "Promotions" gives present employees preferences for promotions. It is not mandatorily negotiable. N. Bergen Bd. of Ed. v. N. Bergen Fed. Teachers, 141 N.J. Super. 97 (App. Div. 1976).

Both paragraphs of "Involuntary Transfers and Reassignments" are not mandatorily negotiable. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

ORDER

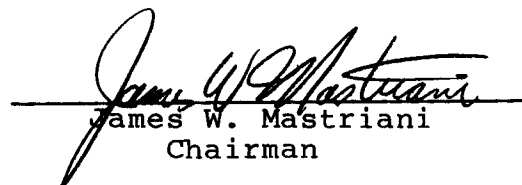
A. The following are not mandatorily negotiable:

"Association Rights and Privileges", Paragraph G; "Extended Leaves of Absence", Paragraph D, "Benefits" Second Sentence; "Promotions" Paragraph B; "Involuntary Transfers and Reassignments", Paragraphs A and B.

B. The following provisions are mandatorily negotiable:

"Miscellaneous Provisions, Paragraph A; "Protection of Employees", Paragraphs A through D inclusive and "Association Rights and Privileges", Paragraph H.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
January 16, 1987
ISSUED: January 16, 1987