

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PRINCETON REGIONAL BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-71

PRINCETON REGIONAL EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of several clauses in an expired collective negotiations agreement between the Princeton Regional Board of Education and the Princeton Regional Education Association. The Commission concludes that provisions addressing the structure of the school day for the high school and middle school, including the amounts of time for classes, homeroom and passing between classes, is an educational policy determination and is not mandatorily negotiable. The Commission concludes that the teaching load for elementary school teachers is mandatorily negotiable. The Commission concludes that an article on non-teaching duties is not mandatorily negotiable as it prohibits the assignment of teachers to duty assignments and interferes with the Board's ability to ensure student safety and supervision. However, the Commission finds the issues of compensation and rotation of such duties to be mandatorily negotiable. The Commission concludes that an article restricting inter-school travel unduly restricts teacher assignments and is not mandatorily negotiable, but travel requirements may raise mandatorily negotiable issues of compensation and workload. The Commission concludes that an article concerning teachers' final evaluations upon termination is mandatorily negotiable to the extent the provision requires that items placed in a file also be sent by the Board to the teacher. The Commission concludes that an article concerning personal and academic freedom centers on educational policy and is not mandatorily negotiable. The Commission concludes that an article requiring that teachers receive copies of all texts used in courses does not significantly interfere with the Board's right to determine curriculum and is mandatorily negotiable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Cassetta, Taylor, Whalen & Hybbeneth,
Consultants (Garry M. Whalen, on the brief)

For the Respondent, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel; Gidian R. Mellk, on the
brief)

DECISION

On June 3, 2002, the Princeton Regional Board of
Education petitioned for a scope of negotiations determination.
The Board seeks negotiability determinations concerning several
clauses in an expired collective negotiations agreement between it
and the Princeton Regional Education Association.

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

The Association represents teachers and other
certificated personnel. The parties' agreement expired on June
30, 2002.

During the course of negotiations, the Board identified several clauses that it believed were non-negotiable and sought to have them excluded from the successor contract. The Association refused and this petition ensued.^{1/}

The Board's briefs cite Commission and court precedents which it asserts hold that the disputed clauses are not mandatorily negotiable. The Association argues that the Board has not specified how the challenged provisions significantly interfere with the determination of educational policy. The Board replies that precedent has clearly established the non-negotiability of these issues.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

^{1/} The parties have completed negotiations on a new agreement, but the negotiability of these clauses remains in dispute.

We consider only the abstract negotiability of the disputed clauses. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977). Our negotiability determinations are issued case-by-case based on relevant precedents and the issues and facts presented by the parties' dispute. See Troy v. Rutgers, 168 N.J. 354, 383 (2001); Jersey City and POBA and PSOA, 154 N.J. 555, 574 (1998).

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 404-405]

Article 8 is entitled Teaching Hours and Teaching Load.

The disputed portions follow:

B. 1. The daily teaching load in the high school shall not exceed five (5) hours per day of pupil contact, consisting of five [(15) teaching periods and one (1) duty period. In case of identified need the administration and the Association shall mutually agree to an assigned sixth teaching period in lieu of a

duty period. The high school day shall consist of seven (7) hours and one (1) minute, which includes eight (8) periods not to exceed fifty (50) minutes each and three (3) minutes of passing time per period.

B.2. The daily teaching load in the middle school for teachers and subject area coordinators shall not exceed five (5) hours per day of pupil contact, consisting of six (6) periods. The middle school day shall consist of a thirty (30) minute lunch, seven (7) periods not to exceed fifty (50) minutes each, including passing time, and a five (5) minute homeroom period exclusive of pupil contact times.

B.3. The teaching load in the elementary schools shall not exceed twenty-four (24) hours and ten minutes of pupil contact per week, excluding a homeroom period of five (5) minutes.

The Board argues that the duration of class and homeroom periods are within the structure of the school day and are therefore not mandatorily negotiable. The Board also argues that the amount of passing time between periods is not mandatorily negotiable. It cites South Brunswick Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238 (¶28114 1997) and Franklin Tp. Bd. of Ed., P.E.R.C. No. 96-31, 21 NJPER 395 (¶26242 1995). It has not challenged language defining teacher workload which it concedes is mandatorily negotiable.

The Association asserts that Franklin requires that a public employer specify how this clause significantly interferes with the determination of educational policy. It argues that the Board has not satisfied this requirement.

Determining the structure of a school day -- including the amounts of time for classes, homeroom and passing between classes -- is in the abstract an educational policy determination. Paragraphs B.1 and B.2 would restrict the Board's flexibility in these areas and therefore significantly interfere with that policy determination. No facts warrant a different application of the balancing test.

In Paragraph B.3, the exclusion of the homeroom period is linked to teaching load, not the school day. To the extent that provision is intended to permit only five minutes per day of non-teaching pupil contact beyond the 24 hour and ten minutes of pupil contact time per week, it is mandatorily negotiable. The provision cannot, however, restrict the Board's right to set the length of the homeroom period within the negotiated workload limits.

Article 9 is entitled Non-Teaching Duties. Section B is entitled Duty Assignments. It provides:

1. Elementary teachers shall continue to be relieved of all duties.
2. In the Middle School the following applies:
 - a. Teachers shall continue to be relieved of cafeteria supervision
 - b. In 1998-2002, there shall be no bus duty before or after school.
 - c. In 1998-2002, there shall be no pupil supervisory duties before or after school.

The Board asserts that it has a managerial prerogative to assign teachers to pupil supervision duties. It cites River Vale Bd. of Ed., P.E.R.C. No. 98-97, 24 NJPER 117 (¶29059 1998); Clifton Bd. of Ed., P.E.R.C. No. 96-10, 21 NJPER 284 (¶26182 1995); and Florham Park Bd. of Ed., P.E.R.C. No. 93-64, 19 NJPER 117 (¶24056 1993). The Association responds that a need to assign teachers to pupil supervision duties has not been shown.

Article 9, Section B is not mandatorily negotiable. It prohibits the assignment of teachers to pupil supervision duties and therefore significantly interferes with the Board's ability to ensure student safety and supervision. The cases cited by the Board are on point. See also Byram at 24; Wood-Ridge Bd. of Ed., P.E.R.C. No. 2000-109, 26 NJPER 317 (¶31128 2000); Bergenfield Bd. of Ed., P.E.R.C. No. 99-100, 25 NJPER 286 (¶30120 1999); Belleville Bd. of Ed., P.E.R.C. No. 97-11, 22 NJPER 320 (¶27162 1996).

While the assignment of pupil supervision duties to teachers is not mandatorily negotiable, the issues of compensation and rotation of such duties among teachers are severable and mandatorily negotiable. See, e.g., Long Branch Bd. of Ed., P.E.R.C. No. 93-8, 18 NJPER 403, 404 (¶23182 1992); Union Tp. Bd. of Ed., P.E.R.C. NO. 89-50, 14 NJPER 692 (¶19295 1988), aff'd NJPER Supp.2d (¶189 App. Div. 1989); Atlantic Highlands Bd. of Ed., P.E.R.C. NO. 87-28, 12 NJPER 758 (¶17286 1986).

Article 12 is entitled Teacher Assignment. Paragraph A.1 states:

Schedules of teachers who are assigned to more than one (1) school shall be arranged so that no teacher shall be required to engage in an unreasonable amount of inter-school travel.

In Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981), a proposed contract clause would have required the board to "minimize" where possible inter-school travel for teachers with multi-building assignments. We held that the proposal was not mandatorily negotiable since it significantly interfered with the prerogative to assign teachers recognized by Ridgefield Park. We recognize that this clause is less intrusive on that prerogative than the one in Jersey City, but the clause still unduly restricts teacher assignments and we see no facts warranting a different application of the balancing test in this case. We add, however, that travel requirements may raise mandatorily negotiable issues of compensation and workload. Cf. Ewing Tp. Bd. of Ed., P.E.R.C. No. 95-99, 21 NJPER 217 (¶26137 1995).

Article 15 is entitled Teacher Evaluation. Section D provides:

Final evaluation of a teacher upon termination shall be concluded prior to severance, and thereafter only documents, correspondence, and/or other materials sent to or received from the teacher shall be placed in the personnel file.

The Board relies on East Brunswick Bd. of Ed. v. East Brunswick Ed. Ass'n, P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981), aff'd in pt., rev'd in pt., NJPER Supp.2d 115 (¶97 App.

Div. 1982). In Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 95-15, 20 NJPER 334, 338 (¶25175 1994), we applied East Brunswick and held not mandatorily negotiable a provision that prohibited the placement in a personnel file of any post-severance materials that were not connected with the severance. This provision is different because it simply requires that material placed in the file be sent to or received from the teacher. To the extent that means that only materials sent directly to a teacher can be placed in a personnel file, it would significantly interfere with the Board's prerogative to evaluate teachers. To the extent, however, the provision simply requires that any material placed in a file also be sent by the Board to the teacher, it protects the teacher's interest in knowing the contents of his or her personnel file and would not interfere with any educational policy determinations. Our order will reflect this distinction.

Article 28 is entitled Personal and Academic Freedom.

Section C provides:

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the Princeton Regional School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their functions.

In Winslow Tp. Bd. of Ed., P.E.R.C. No. 2000-95, 26 NJPER 280 (¶31111 2000), we held that a similar provision in an expired agreement was not mandatorily negotiable. We said:

The subject of academic freedom centers on educational policy and a school board generally has a right to unilaterally adopt policies on academic freedom. Rutgers, the State Univ., P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991); Hunterdon Central H.S. Dist. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986). [26 NJPER at 282]

That application of the balancing test applies here as well. Accordingly, we hold that Article 28, Section C is not mandatorily negotiable.


Article 29 provides that "Copies of all texts used in each of his/her courses shall be provided for each teacher." The Board argues that providing textbooks to teachers is an educational policy decision, citing Jersey City. As the Board concedes, the clauses found non-negotiable in Jersey City were different in character and scope than Article 29 which merely requires that a teacher receive a copy of a textbook to be used in each course the employee is assigned to teach. Adherence to this clause would not significantly interfere with the Board's right to determine curriculum as the clause does not allow the instructors to choose the texts. Compare West Paterson Bd. of Ed., P.E.R.C. No. 98-31, 23 NJPER 540 (¶28267 1997). In essence, this provision requires that the employer, rather than the employee, supply a "tool" that the employer requires be used on the job. Cf. Garfield Bd. of Ed., P.E.R.C. No. 90-48, 16 NJPER 6, 8-9 (¶21004 1989) (proposals that Board purchase and launder special clothing needed by gym, shop, lab and home economics teachers were mandatorily negotiable).

ORDER

A. The disputed portions of these contract provisions are mandatorily negotiable: Article 8, Paragraph B.3 to the extent it is intended to permit only five minutes per day of non-teaching pupil contact beyond the 24 hour and ten minutes of pupil contact time per week; Article 15, Section D to the extent it requires that any material placed in a file also be sent by the Board to the teacher; Article 29.

B. The disputed portions of these contract provisions are not mandatorily negotiable: Article 8, Paragraphs B.1 and B.2; Article 9, Section B; Article 12, Paragraph A.1; Article 15, Section D to the extent it means that only materials sent directly to a teacher can be placed in a personnel file; Article 28, Section C.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Mastriani, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: September 26, 2002
Trenton, New Jersey
ISSUED: September 27, 2002