

P.E.R.C. NO. 89-126

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORANGE BOARD OF EDUCATION,

Petitioner-Respondent,

-and-

Docket Nos. SN-89-55 & 56

ORANGE NON-CERTIFICATED
EMPLOYEES ASSOCIATION,

Respondent-Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds that a layoff provision in a collective negotiations agreement between the Orange Board of Education and the Orange Non-Certificated Employees Association is mandatorily negotiable as applied to layoffs of certain aides. The Commission does not believe that negotiations would significantly interfere with the determination of educational policy.

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Respondent-Petitioner.

Appearances:

For the Board, Schwartz, Pisano, Simon, Edelstein &
Ben-Asher, Esqs. (Lawrence S. Schwartz, of counsel;
Nicholas Celso, III, on the brief)

For the Association, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks (Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On February 24, 1989, the Orange Board of Education ("Board") and the Orange Non-Certificated Employees Association each filed a Petition for Scope of Negotiations Determination. The petitions were filed pursuant to a January 23, 1989 order of the Hon. Paul B. Thompson, P.J.S.C. issued in a civil action between the Board and the Association (Dkt. No. W-07451-88F, Superior Court, Essex County). The Association's complaint in that case alleged that the Board's layoff of locker room and corridor aides violated seniority provisions in a collective negotiations agreement. The Court's order transferred the case to us to determine the negotiability of the contract provisions in dispute.

Both parties have filed briefs and exhibits. These facts appear.^{1/}

The Association is the majority representative of non-certificated employees. The Board and the Association were parties to an agreement effective from July 1, 1984 to June 30, 1986. On May 28, 1987, the parties entered an agreement effective from July 1, 1986 to June 30, 1988. Both agreements group unit employees into three categories: Category A (Full-Time Aides) includes library aides, instructional aides, corridor aides, Chapter I community agents and locker room aides; Category B (Pupil Personnel) includes attendance officers; Category C (Chapter I) includes assistant teachers. They also provide: "Tasks will be assigned to Association personnel interchangeably within each category." Article 11 of the 1984 to 1986 agreement provides:

In the event of a departmental or work relocation [sic] in force, including reductions caused by the discontinuance of a facility or its relocation or a decrease in enrollments on the basis of fiscal dependencies and in accordance with N.J.S.A. 18A:28-9 to 18A:28-14 the employees shall be laid off in the inverse order of seniority of the employees in the unit involved.

The agreements also contain four separate salary guides: (1) instructional aides; (2) assistant teachers (3) attendance officers and (4) locker room aides and corridor aides.

^{1/} In the absence of substantial and material disputed facts, we deny the Board's request for an evidentiary hearing. N.J.A.C. 19:13-3.7.

The Board has submitted two job descriptions. One applies to locker room aides and corridor aides; the other covers four types of instructional aides: classroom aides; special education aides; bilingual aides and physical education aides.

The locker room/corridor aides supervise pupils in hallways and entrances, locker rooms, study halls and the cafeteria. The qualifications for these positions are:

1. High school diploma or the completion of a formal training program designed for teachers' aides and prepared and run by professionals. Such course shall consist of training in the role of aide and in the skills necessary (audio-visual, housekeeping, control, working with children and clerical skills).
2. Experience working with groups of children either through principal attested voluntary work in school, or Head Start or similar programs.
3. Excellent Physical Health. A physical examination or a letter from a physician indicating the general health of the applicant and the appropriateness for working with children in a classroom situation, will be required of the successful applicant.
4. Two letters of recommendation.

The job description for instructional aides does not list qualifications. A paragraph applicable to physical education aides states that such aides will work only in the gym and locker areas, will follow the teacher's instructions and will help supervise and clear the locker rooms. Job duties of other instructional aides include:

1. Classroom Contact with Children shall include:
 - a. Reading to children as directed by the teacher.
 - b. Assisting children complete assigned work.
 - c. Assisting with a group of children or individuals for review purposes as assigned by the teacher.
 - d. Assist in the development of bulletin boards and posting material.
 - e. Assist in the supervision of classroom projects as directed by the teacher.
2. Supervisory Contact with Children shall include:
 - a. At the elementary level, assist with the supervision of children before and after school as scheduled by the principal.
 - b. Assisting with the supervision of children in emergencies, as assigned by the principal.
 - c. Assisting in the movement of children to and from classes, and activities.
3. Clerical Tasks:
 - a. Copy data, records (other than official) and other information as directed by the teacher or principal.
 - b. Parent/teacher conference preparation.
 - c. Reproduce materials as required.
 - d. Grade and log objectives tests when appropriate.
 - e. Other appropriate clerical responsibilities.
4. Instruction Equipment responsibilities:
 - a. Set up, take down, and store all A.V. and instructional equipment as may be required by the teacher.
 - b. Boot up, program load, and shut down classroom computers.
 - c. Facilitate the acquisition of A.V. materials from lending agencies.
 - d. Maintain classroom equipment inventory.
5. Performs all other duties within the scope of the job description and as assigned or approved by the Principal.

6. Specific to Special Education Aides

- a. Follows the special education teacher's written or verbal instruction.
- b. Assists the special education teacher while she/he is instructing students.
- c. Accompanies special education teacher when students are taken from one room to another, to the library, gym, bus, bathroom, lunchroom, field trips, etc.
- d. If asked, assists the teacher in the physical restraint of a child who is acting out in a manner which is dangerous to himself or others.
- e. Assists students to locate coat, books, etc., when they leave to go home at the end of the day.

7. Specific to Bilingual/E.S.L. Aides

- a. Follows the Bilingual/E.S.L. teacher's written or verbal instructions.
- b. Assists the Bilingual/E.S.L. teacher while he/she is instructing students.
- c. Helps student to locate coats, books, etc., when they leave to go home at the end of the day.

During the 1986-1987 school year, Martha M. Baptist, Crystal Battle, Shirley Jones, Edith Mackey, Mary Mayes, Richard Powers and Reva Wiggins ("plaintiffs") were employed as either corridor or locker room aides. All plaintiffs are listed with at least two years experience. With the exception of the assistant teacher category, there are employees in all aide titles with less seniority than all plaintiffs.

On April 24, 1987, each plaintiff received a letter stating that because of budget reductions the Board would consider a recommendation not to renew the employee's contract for the 1987-1988 school year. The letter said the employee's name would be maintained on a reemployment list for openings within the employee's job description.

On April 29, 1989, the day after the Board's meeting, the superintendent wrote each employee that the Board had abolished the locker room and corridor aide positions and that the employee would be terminated on June 30, 1987. On June 22, 1987, the Association filed a grievance alleging that the layoffs violated seniority provisions of the collective negotiations agreement because employees with less seniority than those laid off had been retained. The Board denied the grievance.

On November 4, 1987 the Association filed a complaint in Superior Court.^{2/} It sought an order directing that the Board lay off aides in inverse order of seniority in the unit rather than in each job category and that those employees wrongfully terminated be reinstated with backpay and other employment emoluments plus attorneys fees and interest. The Board responded that Article 11 of the 1984-1986 agreement was not negotiable or enforceable.

On January 23, 1989, Judge Thompson directed that the case be transferred to the Commission. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). The Court retained jurisdiction. These petitions ensued.

The Board acknowledges that an agreement to lay off employees by seniority is ordinarily negotiable but asserts that applying seniority unit-wide rather than by position interferes with its managerial prerogative to determine the qualifications for

^{2/} The parties' agreements do not provide for binding arbitration of grievances.

various positions. It asserts that the locker room aides and corridor aides are not qualified to fill other unit positions. It further asserts that education statutes and a regulation, N.J.A.C. 6:11-4.5, preempt negotiations over Article 11.^{3/}

^{3/} N.J.A.C. 6:11-4.5 provides:

(a) School aides and/or classroom aides, assisting in the supervision of pupil activities under the direction of a principal, teacher or other designated certified professional personnel, shall be approved in accordance with regulations and procedures adopted by the State Board of Education in February, 1968. Copies of these procedures are available from the Bureau of Teacher Preparation and Certification or the offices of county superintendent of schools.

(b) Current rules require school districts employing aides to develop job descriptions and standards for appointment. These descriptions and standards should be based on study of local needs. The nature of the job descriptions will dictate the qualifications to be met, the proficiency standards needed, and the pay to be received.

(c) The locally developed descriptions and standards adopted by the district board of education shall be submitted by the chief school administrator to the county superintendent for approval, in accordance with the rules outlined below:

1. Any district board of education employing school aides or classroom aides shall submit to the county superintendent of schools a job description for each type of aide to be employed, setting forth the duties to be performed, the types of proficiency needed, the qualifications to be required, and the arrangement for supervision of the aides. The qualifications shall include proof of good moral character.

The Association, noting the grouping of all aides in "Category A", contends that the dispute involves the mandatorily negotiable subject of layoff by seniority.^{4/} It asserts that N.J.A.C. 6:11-4.5 does not "expressly, specifically or comprehensively" preempt negotiations over Article 11.

At the outset of our analysis, we stress that this dispute does not concern the Board's decision to reduce its workforce. That determination is not mandatorily negotiable. E.g., Maywood Ed.

3/ Footnote Continued From Previous Page

2. The county superintendent of schools shall review the job descriptions and qualifications proposed for positions for the various types of supervisory or classroom aides. If he or she finds that the description and qualifications are in accordance with the policies of the State Board of Education, and conform to sound educational practice, he or she shall approve them, and notify the district board of education of his or her approval in writing.

3. At least once each year, and at such other times as the county superintendent may require, the chief school administrator shall submit to the county superintendent the names of the persons employed as aides, and a statement certifying that the persons appointed meet the qualifications approved by the county superintendent of schools and are being supervised in accordance with the approved plan. The chief school administrator and the county superintendent shall keep appropriate records and the county superintendent shall keep appropriate records of the individuals so approved.

4/ The Association does not assert that the laid off aides are entitled to attendance officer positions in Category B or assistant teacher positions in Category C.

Ass'n v. Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). We also do not determine the parties' contractual rights. We do not have jurisdiction to consider that issue. Ridgefield Park at 154.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), establishes the tests 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 statutes and regulations cited by the Board do not preempt negotiation of a clause basing layoffs on unit-wide seniority. The regulations address the content of job descriptions and set forth a procedure for having them reviewed by state educational officials. The Association is not challenging the Board's right to define job duties and there is no suggestion that the Board did not submit the job descriptions for approval. West Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56, 57 (¶11030 1980).

State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), establishes that seniority as it relates to layoffs,

recalls, reemployment and bumping is a mandatory subject of negotiations absent preemption. The Court stated:

We have no doubt that these questions all relate to terms and conditions. Nothing more directly and intimately affects a worker than the fact of whether or not he has a job. Since only those workers whose work is judged satisfactory are included in this proposal, there is no danger of the merit system being injured.
[Id. at 84]

Recently, the Appellate Division held mandatorily negotiable a provision requiring the layoff of custodians by seniority.

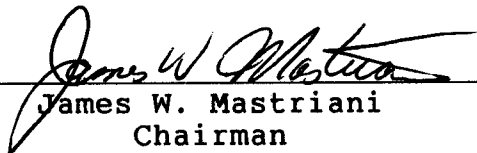
Lyndhurst Bd. of Ed., P.E.R.C. No. 87-111, 13 NJPER 271 (¶18112 1987), aff'd App. Div. Dkt. No. A-3924-86T8 (5/25/88); see also Atlantic Community Coll., P.E.R.C. No. 82-58, 8 NJPER 34 (¶13015 1981) (layoff of counselor by seniority mandatorily negotiable).

Although Lyndhurst and Atlantic Community Coll. involved seniority and bumping rights within a single job classification, they apply under the circumstances of this case. The collective negotiations agreement specifies that tasks are interchangeable among aides in Category A, the only category in question. On the face of the job descriptions we find no significant difference between the job duties of the locker room/corridor aides and those of other aides. The training required of locker room and corridor aides includes audio-visual, housekeeping, control, and clerical skills and training in working with children, items which are also reflected in the duties of instructional aides. Since we do not believe that negotiations would significantly interfere with the determination of educational policy, we conclude that Article 11, as applied to Category A aides, is mandatorily negotiable.

ORDER

Article 11 of the parties agreement is mandatorily negotiable as applied to layoffs of aides within Category A..

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained. Commissioner Smith was not present.

DATED: Trenton, New Jersey
May 15, 1989
ISSUED: May 16, 1989