

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EGG HARBOR TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-7

EGG HARBOR TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of provisions in an expired contract between the Egg Harbor Township Board of Education and the Egg Harbor Township Education Association. The Commission finds mandatorily negotiable a provision requiring that the administration will develop a procedure setting forth appropriate regulations governing conditions under which supervisors and administrators criticize teachers. A portion of a provision providing for compensatory time for kindergarten teachers required to work a longer work day on days preceding holidays is mandatorily negotiable. A provision that provides that the Board will attempt to equitably distribute the workload within the district is mandatorily negotiable to the extent it applies to non-teaching workloads, but not to the extent it applies to teaching assignments. The Commission finds not mandatorily negotiable a provision that would require a four and one-half hour day on days preceding these holidays.

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, Capehart & Scatchard, P.A., attorneys  
(Joseph F. Betley, of counsel; Kim C. Belin, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Steven R. Cohen and Kenneth Waldman, on the brief)

DECISION

On July 16, 1999, the Egg Harbor Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a declaration that several provisions in its expired contract with the Egg Harbor Education Association are not mandatorily negotiable.

The parties have filed briefs and exhibits.<sup>1/</sup> These facts appear.

The Association represents all regularly employed certificated personnel. The parties' collective negotiations

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<sup>1/</sup> We do not consider the Board's untimely reply brief.

agreement expired on June 30, 1999. After the Board filed its petition, the parties reached agreement on a new contract on all issues except those raised in the petition and discussed in the briefs.<sup>2/</sup>

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

[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 IV, Paragraph F provides:

During the term of this Agreement, the administration will develop a procedure which sets forth appropriate regulations governing conditions under which supervisors or administrators criticize teachers. Such procedure will be implemented after consultation with the Association on its provision.

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<sup>2/</sup> The scope of negotiations petition raises five disputed provisions. The Association's brief disputed the negotiability of three of the provisions. We will assume, therefore, that the two other provisions will not be part of the next contract.

The Board asserts that this provision interferes with its managerial prerogative to initiate discipline. It cites Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986) and Flemington-Raritan Reg. Bd. of Ed., P.E.R.C. No. 90-58, 16 NJPER 40 (¶21018 1989). The Association responds that this provision is mandatorily negotiable as it does not prohibit public criticism. It also cites Flemington-Raritan Reg. Bd. of Ed. and Monroe Tp. Bd. of Ed., P.E.R.C. No. 93-9, 18 NJPER 428 (¶23194 1992).

We recently decided a similar proposal involving this Board and its support staff. Egg Harbor Tp. Bd. of Ed., P.E.R.C. No. 2000-39, 26 NJPER \_\_\_\_ (¶\_\_\_\_ 1999). In that case, we held that a proposal that did not ban all public criticism was negotiable under Monroe. The instant proposal is even less intrusive upon educational policy since the administration retains the final say on what conditions are appropriate. We therefore hold that this provision is mandatorily negotiable.

Article VII, Paragraph E provides:

The last workday preceding Thanksgiving, Christmas Day, and Good Friday shall be a four and one-half (4 1/2) hour school workday. If kindergarten teachers are required to work a five (5) hour workday on such date, each such teacher shall receive compensatory time equal to the additional work time. Compensatory time shall be taken within two (2) school weeks after the times worked and at a time mutually agreed between the teacher and the principal.

The Board asserts that this provision interferes with its managerial prerogative to establish the school calendar. The Association asserts that the Board has traditionally required teachers to teach a half day before holidays and that, under Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980), the compensation due employees whose work day is extended before a holiday is mandatorily negotiable.

We hold that the Board need not negotiate over the length of the school day before holidays. That determination is a component of the prerogative to set a school calendar. See Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973). Therefore, the first sentence of Article VII, Paragraph E is not mandatorily negotiable. This determination does not affect the Association's right to seek extra compensation through a grievance or negotiations should work hours be increased.

The second and third sentences of Article VII, Paragraph E are a mechanism to compensate kindergarten teachers who may have to work five hours on those days. That mechanism is mandatorily negotiable.

Article VII, Paragraph H provides:

The Board will attempt to equitably distribute the workload within the district.

The Board asserts that this provision limits its flexibility and discretion to make professional assignments. It

relies on Caldwell-West Caldwell Ed. Ass'n v. Caldwell-West Caldwell Bd. of Ed., 180 N.J. Super. 440 (App. Div. 1981). The Association responds that this paragraph does not address professional assignments and is negotiable to the extent it applies to non-teaching workloads. The Board has not replied to that assertion.

Given the parties' positions, this dispute has been substantially narrowed. The Association does not appear to dispute that the provision is non-negotiable to the extent it applies to teaching assignments -- Caldwell-West Caldwell. We so hold. The Board does not appear to dispute that the provision is mandatorily negotiable to the extent it applies to non-teaching workloads -- e.g. rotation of cafeteria supervision assignments. Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER 758 (¶17286 1986). We so hold.

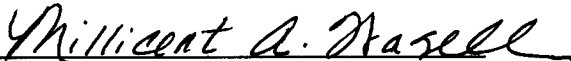
#### ORDER

Article IV, Paragraph F is mandatorily negotiable.

The first sentence of Article VII, Paragraph E is not mandatorily negotiable. The second and third sentences are mandatorily negotiable.

Article VIII, Paragraph H is mandatorily negotiable to the extent it applies to non-teaching workloads, but not to the extent it applies to teaching assignments.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: December 16, 1999  
Trenton, New Jersey  
ISSUED: December 17, 1999