

P.E.R.C. NO. 90-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VINELAND BOARD OF EDUCATION,

Respondent,

-and-

Docket No. SN-89-83

EDUCATION ASSOCIATION OF VINELAND,

Petitioner.

SYNOPSIS

The Education Association of Vineland sought a determination of the negotiability of an issue in a dispute it has with the Vineland Board of Education. The Public Employment Relations Commission finds that the question of who receives the interest on funds withheld under the summer payment plan is mandatorily negotiable.

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Appearances:

For the Petitioner, Saiber, Schlesinger, Satz & Goldstein,
Esq. (Steven S. Goldenberg, of counsel)

For the Respondent, Gruccio, Pepper, Giovinazzi & DeSanto,
P.A. (John C. Scannell, of counsel)

DECISION AND ORDER

On June 14, 1989, the Education Association of Vineland petitioned for a scope of negotiations determination. The Association requests a declaration that the disposition of interest earned under summer payment programs is not mandatorily negotiable because that money belongs to the teachers under common law principles. The Vineland Board of Education contends that this issue is mandatorily negotiable.

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

The Association represents the Board's certified, clerical and secretarial personnel. The parties' most recent collective negotiations agreement was effective from July 1, 1986 to June 30, 1989. Article 11 is entitled Salaries. Section B.2 provides:

Teachers may individually elect to have ten percent of their monthly salary deducted from their pay. These funds shall be paid to the teacher according to a schedule of payment throughout the summer as agreed upon by the Board and the Association.

Similar summer payments provisions have been in each collective negotiations agreement since 1970. Such summer payment programs are authorized by N.J.S.A. 18A:29-3.^{1/}

Under the negotiated summer payment plan, the Board withholds 10 percent of each participant's net salary check from September through June. The withholdings are deposited in an interest-bearing account. The withheld compensation is then paid to participants in two installments -- one in July and one in August. The Board has never paid teachers interest on the amounts withheld and the parties' contracts have not addressed that issue.

^{1/} That statute provides:

Whenever persons employed for an academic year by a board of education shall indicate in writing their desire to participate in a summer payment plan and such board of education approves such participation, then, and thereupon, the proper disbursing officer of the board of education, under such rules as may be promulgated by the commissioner with the approval of the State board, is hereby empowered and directed to deduct and withhold an amount equal to 10% of each semimonthly or monthly salary installment, from the payments of the salaries made to such employees as shall participate in such plan and the accumulated deductions for any academic year shall be paid to the employee or his estate under such rules as may be established by the board of education in one of the following ways: (1) at the end of the academic year; (2) in one or more installments after the end of the academic year but prior to September 1; (3) upon death or termination of employment if earlier. Such deductions may be deposited by the board of education in an interest bearing account in any financial institution having its principal office in the State of New Jersey....

In December 1987, the Association began an action against the Board in the Chancery Division of the Superior Court. It claimed that the teachers it represented were entitled to any interest earned under the summer payment plan. On July 7, 1988, the Honorable Paul R. Porreca, J.S.C., transferred the case to the Commissioner of Education.

The Commissioner then referred the matter to the Office of Administrative Law as a contested case. The Association filed a motion for summary judgment and the Board filed a cross-motion.

On March 3, 1989, Administrative Law Judge Jeff S. Masin issued his recommended decision. He ruled that laches barred the Association from recovering interest on deductions before it filed the Superior Court lawsuit, but the Association had an enforceable claim under the common law of trusts to the interest arising from later deductions. He further held that the timing of the interest payments and the amount of interest which the Board could deduct to offset its trusteeship expenses were proper subjects for negotiation.

On April 17, 1989, the Commissioner of Education dismissed the Association's petition. He rejected Judge Masin's conclusion that, given the silence of N.J.S.A. 18A:29-3, the employees owned the interest on the deductions. He suggested that the question of whether the Board or the teachers owned the interest might well be subject to negotiations; but he declined to rule on the negotiability issue in light of the Commission's primary jurisdiction over scope-of-negotiations disputes. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 316 (1979). This petition ensued.

The Association argues that the common law of trusts and property mandates that the interest be paid to plan participants and that their entitlement to interest payments is not a term and condition of employment. The Board responds that the Association lacks standing to file this petition and is estopped from doing so; that no trust relationship exists, and that the interest question is negotiable.^{2/}

At the outset of our analysis, we stress the narrow boundaries of our jurisdiction. 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. [78 N.J. at 154]

Thus, we do not consider the Board's estoppel argument.^{3/}

A subject is mandatorily negotiable if: (1) it has not been preempted by a statute or regulation; (2) it intimately and directly

^{2/} The Association requested oral argument. We deny that request.

^{3/} The Association has standing to pursue this petition since it seeks to define the scope of negotiations between it as the majority representative and the employer.

affects the work and welfare of public employees, and (3) a negotiated agreement would not significantly interfere with governmental policy. See Wright v. E. Orange Bd. of Ed., 99 N.J. 112 (1985); Local 195, IFPTE v. State, 88 N.J. 393 (1982). Applying these standards, we hold that this dispute is mandatorily negotiable.

A statute or regulation is not preemptive unless it fixes a term and condition of employment "expressly, specifically and comprehensively." Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982). N.J.S.A. 18A:29-3 permits (but does not require) boards to place summer payment funds in interest-bearing accounts, but it is silent on the disposition of the interest.^{4/} The regulation implementing this statute is also silent on the issue. N.J.A.C. 6:20-2.9. In the opinion which generated this proceeding, the Commissioner of Education held that this statute does not entitle employees to receive the interest. We accept that determination. See also Wildwood Ed. Ass'n v. Wildwood Bd. of Ed., Chan. Div. Dkt. No. C-7868-87 (11/9/88), appeal pending App. Div. Dkt. No. A-2543-88T2; cf. Dunwoody v. Moorestown Tp. Bd. of Ed., 1976 S.L.D. 667 (board may elect to distribute interest to employees or representative). We accordingly hold that no statute or

^{4/} Indeed, the Legislature enacted this statute despite the vote of the Senate Education Committee to refer the bill for study and clarification of what was to be done with the interest.

regulation preempts negotiations over the disposition of the interest.

The Association argues that the common law of trusts and property mandates that the interest be paid to employees, thus prohibiting any contrary negotiated agreement. The Court in Wildwood and the Commissioner in this case disagreed. But see Orange Ed. Ass'n v. Orange Bd. of Ed., Law Div. Dkt. No. L-10301-85 (9/24/86) (interest belongs to employee, subject to an allowance for reasonable administrative expenses). We have never extended the preemption doctrine to common law principles, and will not do so here. See State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). The operation of common law principles must instead be resolved by our courts.

Given the absence of a preemptive statute or regulation or a claimed managerial prerogative, the question of who gets the interest is mandatorily negotiable if it "intimately and directly affects the work and welfare of employees." It does. Compensation issues are mandatorily negotiable in general. Hunterdon Cty. Freeholders Bd. and CWA, 116 N.J. 322 (1989); Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super 93 (App. Div. 1986); Bor. of River Edge, P.E.R.C. No. 89-44, 14 NJPER 684 (¶19289 1988). Questions such as what will be the details of a summer payment plan; whether funds should be deposited in an interest-bearing account; who will get the interest, and whether the employer should be reimbursed for its expenses all contribute to determining the

ultimate compensation the employer will pay and the employees will receive.^{5/} They intimately and directly affect employees and are mandatorily negotiable.

ORDER

The question of who receives the interest on funds withheld under the summer payment plan is mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
November 20, 1989
ISSUED: November 21, 1989

^{5/} We do note that the parties may negotiate an option of credit union deductions under N.J.S.A. 40:11-26. Such deductions would avoid the questions raised by a summer payment plan since the employer would not be the custodian of the funds deducted.