

P.E.R.C. NO. 93-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORANGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-123

ORANGE NON-CERTIFICATED
EMPLOYEES' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a contract proposal made by the Orange Non-Certificated Employees' Association during successor contract negotiations with the Orange Board of Education is not mandatorily negotiable as applied to those aides whose duties require them to supervise and assist students after school. The proposal provides that all aides can take their two fifteen minute breaks at the end of the school day and thus leave one half hour early.

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Appearances:

For the Petitioner, Schwartz, Simon & Edelstein, attorneys
(Nicholas Celso, III and Andrew B. Brown, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION AND ORDER

On June 30, 1992, the Orange Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that a successor contract proposal of the Orange Non-Certificated Employees' Association is not mandatorily negotiable. That proposal concerns the scheduling of breaks.

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

The Association represents the Board's instructional aides and Chapter One community aides. The job description for instructional aides requires them, among other things, to "assist with the supervision of children before and after school as scheduled by the principal." The job description also specifies

that special education aides and bilingual/E.S.L. aides are to help students "locate coats, books, etc., when they leave to go home at the end of the day."^{1/}

The parties entered into a collective negotiations agreement effective from July 1, 1989 until June 30, 1991. Article VII was entitled Work Year, Daily Working Hours and Overtime.

Section B provided:

The regular work week for employees shall consist of thirty-five (35) on-duty hours. The regular work day will commence at 8:15 a.m. and end at 3:15 p.m., and will include a thirty (30) minute duty-free lunch and two fifteen (15) minute breaks. The two fifteen (15) minute breaks for aides shall be taken at the end of the school day so that all aides can leave their building at 2:45 p.m., provided said breaks are taken at the end of the school day. [Emphasis supplied]

The Association proposed that this provision be retained in any successor contract and the Board responded that the underlined sentence was not mandatorily negotiable. The parties later reached agreement on all other successor contract terms, but agreed that the Commission would resolve the issue of scheduling breaks in a binding decision.

The Board contends that it has a prerogative to mandate that aides not take their breaks at the end of the school day so that they can assist teachers in dismissing students and overseeing students required to remain after school, prepare for the next

^{1/} The Board has not submitted a job description which expressly covers community aides.

school day, and meet with teachers after school. The Association responds that the scheduling of breaks in the work day is mandatorily negotiable and the Board has not demonstrated a factual need to act unilaterally.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), states the tests for determining whether a contract proposal 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]

See also Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v.

Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980). Neither party has asserted that a statute or regulation preempts negotiation. We therefore assess the parties' competing interests and apply the balancing test.

The proposal in question intimately and directly affects the employees' work and welfare. The scheduling of break time and work hours are in general mandatorily negotiable. Englewood Bd. of Ed. v. Englewood Ed. Ass'n, 64 N.J. 1, 6-7 (1973); Trenton Bd. of

Ed., P.E.R.C. No. 88-135, 14 NJPER 452 (¶19187 1987). On its face, the proposal in question is mandatorily negotiable under these precedents. The Board's aides are particularly interested in having the choice of finishing their work day a half-hour earlier by foregoing earlier breaks.

We next consider the Board's interest in requiring the aides not to take their break time at the end of the work day. The Board has a duty and a prerogative to make sure students are safe and properly supervised. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); East Newark Bd. of Ed., P.E.R.C. No. 82-120, 8 NJPER 369 (¶13168 1982). As a technical matter, we note that these employees, although free to leave the building at 2:45 p.m., remain "on duty" until 3:15 p.m. Their duties include supervising children at the end of the school day and helping them prepare to leave. If they leave the school building, they will not be able to perform these duties.

While the wording of this proposal on scheduling breaks is mandatorily negotiable in the abstract, we conclude on balance, that it is not mandatorily negotiable as applied to those aides whose duties require them to supervise and assist students after school.

ORDER

Article VII, Section B is not mandatorily negotiable as applied to those aides whose duties require them to supervise and assist students after school.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioner Bertolino abstained from consideration. Commissioners Grandrimo and Regan were not present.

DATED: November 25, 1992
Trenton, New Jersey
ISSUED: November 25, 1992