P.E.R.C. NO. 78-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP BOARD OF EDUCATION,

Respondent,

Docket No. CO-78-175-59

-and-

EDISON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

This unfair practice proceeding, which was submitted to the Commission on the basis of stipulated facts, briefs, and oral argument, involved the scheduling of make up days due to the large number of school days lost during the 1977-78 winter. There is no dispute regarding the need to schedule additional days to meet the requirement of 180 days of instruction. Additionally, the parties' contract does not limit the Board in terms of scheduling of make up days.

In this context, the Commission determines that the Board did not violate the Act by unilaterally scheduling the make up days without negotiations. The Commission concludes that a board is not required to negotiate regarding the establishment of a school calendar and that, although the teachers' work year is a required subject, negotiations are limited by the school calendar. Thus, the work year must coincide with days of instruction as established by the school board and negotiations are limited to those days, both as to numbers and scheduling, in excess of the days of attendance of students scheduled by the Board to meet its required educational responsibilities. Accordingly, the complaint was dismissed in its entirety.

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Appearances:
For the Respondent, Joseph R. Ferenczi, Esquire

For the Charging Party, Mandel, Wysoker, Sherman, Glassner and Weingartner (Mr. Jack Wysoker, of Counsel)

DECISION AND ORDER

On February 16, 1978, an Unfair Practice Charge and Request for Interim Relief was filed with the Public Employment Relations Commission by the Edison Township Education Association (the "Association") alleging that the Edison Township Board of Education (the "Board") had engaged in unfair practices in violation of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq., (the "Act"). Specifically, the Association alleges that the Board violated N.J.S.A. 34:13A-5.4(a)(1) and (5).[1/] At the time the instant unfair practice charge was filed,

1/ These subsections provide that employers, their representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative." The Commission's authority to grant interim relief in unfair practice cases is set forward in N.J.A.C. 19:14-9.1 et seq.

the Commission's Chairman, Jeffrey B. Tener, declined to sign the proposed Order to Show Cause with temporary restraints submitted by the Association. On the same day, the parties, with the assistance of the Chairman, agreed to submit this matter to the Commission on the basis of stipulated facts /a Complaint was issued on February 21, 1978/, thereby permitting a final Commission decision on the merits prior to the next dates which may be affected by this charge. The parties agreed to an accelerated schedule for the submission of legal briefs in order that the Commission might consider this matter at its March 1978 meeting. This agreement was confirmed by letter of the Chairman to counsel for the parties, dated February 23, 1978.

The facts stipulated by the parties are contained in the Association's charge and the answer to that charge filed by the Board. The Board's answer essentially admits the facts as set forth by the Association, but disputes the legal conclusions which should be drawn from these facts. Thus, the parties have stipulated as follows: The Association is the exclusively recognized majority representative for a negotiations unit composed of teaching staff members employed by the Board. The parties are signatories to a current collective negotiations agreement concerning terms and conditions of employment. On May 9, 1977, the Board adopted a school calendar in accordance with the contractual provisions which provides that the school year is to begin September 7, 1977 and end on June 23, 1978, allowing for three days of recess for inclement weather, if necessary, while still providing for 180 days of school.

Said calendar also establishes that February 17, 1978 shall be a holiday and that there shall be an Easter recess from March 24 through March 31, 1978. To date, the Board has closed the District's schools six times due to inclement weather, thus leaving the district three days short of the required 180 days per annum of student instruction, based upon the existing school calendar.[2/]

The schools were closed on February 6, 7 and 8 due to weather conditions. On February 9, 1978 the Board met in caucus to consider how and when to make up a sufficient number of days to meet the 180 day school year.

At its public meeting on February 13, 1978, the Board adopted a resolution directing that the three day deficiency be remedied by requiring that students and teachers attend school on the February 17, 1978 holiday as well as two of the Easter recess days, March 30 and 31, 1978. This action was taken by the Board unilaterally despite the objections of the Association, and without benefit of collective negotiations.

Both parties to this matter have filed legal briefs and additional memoranda in support of their positions herein.[3/] The Board's brief, while conceding the unilateral action described above, alleges that under the laws of this state it has the right to unilaterally, without collective negotiations, alter the school calendar in order to comply with the requirement of 180 days per annum of

2/ The 180 day minimum school year per pupil is undisputed. See Formal Opinion No. 19-1975, N.J. Attorney General, August 14, 1975.

3/ Additionally, both parties participated in extensive oral argument before the Commission on March 16, 1978.

pupil instruction. It argues that school calendar is an illegal or at least only a permissive subject of negotiations. Further, the Board interposes certain contractual language to support its claim that it has previously negotiated the impact of its school calendar decision on the terms and conditions of the affected employees, and that it has no further obligation to negotiate concerning "impact".

The Association, on the other hand, claims that the Board's decision unilaterally changed the terms and conditions of employment by cancelling the scheduled holidays in violation of the Act. It rejects the contractual defenses proffered by the Board.

It is well settled law in this State that the adoption of a school calendar for students is not a required subject of negotiations, but that the work year of employees -- to the extent that the two can be separated -- is a required subject of negotiations. In Burlington County College Faculty Assn. v. Bd. of Trustees, Burlington County College, 64 N.J. 19 (1973) the court found:

> While the calendar undoubtedly fixes when the college is open with courses available to the students, it does not in itself fix the days and hours of work by individual faculty members or their workload or compensation. These matters...are mandatorily negotiable under the Act though the negotiations are to be conducted in the light of the calendar. (Emphasis added) at p. 12.

In the same decision, the Court cited approvingly the following language in City of Biddeford v. Biddeford Teachers Ass'n., 304 A. 2d 387, 421 (Me. 1973):

> Thus, the commencement and termination of the school year and the scheduling and length of intermediate vacations during the school year, at least insofar as students and teachers are congruently involved, must be held matters of 'educational policy' bearing too substantially upon too many and important non-teaching interests to be settled by collective bargaining or binding arbitration.

The Commission has followed this holding in several decisions and was confronted directly with the issue in In re Greenbrook Township Board of Education, P.E.R.C. No. 77-11, 2 NJPER 288 (1977). The parties framed the issue in that case as follows: "Is the number of working days for teachers established under the school calendar a mandatory subject of negotiations?" 2 NJPER at 288. The Commission answered that question in the affirmative but stated:

> While the adoption of a school calendar will fix the number of days when schools are open and the number of days that students are required to be present it will not in itself fix the number of working days of the teachers. Negotiations on that term and condition of employment are, of necessity, to be conducted in light of the establishment of a school calendar, but its adoption does not preclude meaningful negotiations on the number of teacher working days. 2 NJPER 288-289. (Emphasis added)

Thus, it is clear that the Commission has recognized the coexistence of two concepts: 1) the establishment of the academic or school calendar which is not mandatorily negotiable and 2) the determination of employees' work year which is a term and condition of employment and is mandatorily negotiable. However, it has been recognized that negotiations on the work year for teachers will, as a practical matter, recognize the parameters of the school calendar.

Thus, the areas of mandatory negotiability of teacher work year must be limited to those days, both as to numbers and scheduling, in excess of the days of attendance of students scheduled by the Board to meet their required educational responsibilities.[4/] Those days of the academic calendar which are scheduled by the Board to meet the 180 day requirement of student instruction are not within the scope of mandatory negotiations even though they obviously define the bulk of the work year of the teachers.[5/]

In the instant case, it is undisputed that the Board took its action on February 13, 1978 to meet the emergent situation created by the severity of the winter and the cancellation of numerous school days. It is also stipulated that the Board's alteration of the school calendar did not add additional days to the school year but rather made up three of the six days lost to

4/ This is totally consistent with the Supreme Court's decision in Burlington County College, supra, and this Commission's statements on academic calendar in In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976). However, we would note that both these decisions involved college or university settings in which there may be more flexibility in the scheduling of academic calendars and teacher work year than in primary and secondary school public education.

5/ Consistent with our prior decisions we see nothing in the Education Law which would prohibit a board of education from voluntarily entering into negotiations on the scheduling of student or academic calendar, and establishing the details of that calendar through these negotiations, rather than through unilateral action. We have, therefore, held that the academic calendar is a permissive subject of negotiations. See In re Rutgers and In re Greenbrook, supra.

Therefore in this case, had the parties contract specifically listed February 17 and March 30 and 31 as holidays for teachers or in some other way limited the Board's discretion, additional issues would be present. However, the parties' contract herein actually appears to reserve to the Board the authority to establish the calendar and obligate the teachers to work on any day when students are in attendance. Article 6(a) and (b).

snow to meet the minimum 180 day requirement for a school year. Therefore the Board, in this case, was not obligated to negotiate the change in the days of work of the teachers necessitated by the change in the school calendar either as a direct change in terms and conditions of employment or as the impact of their educational policy decision necessitated by the lost snow days. Accordingly, the Association's charge that the Board's action in scheduling these make-up days without prior negotiations with the Association must be dismissed. Under the facts of this case no such obligation existed.

The above discussion resolves the allegation of an unfair practice charge in this case. However, we would point out that in its attempt to convince this Commission that the Board's actions herein created such a significant impact on the teachers' terms and conditions of employment that the rescheduling of the days had to be negotiated, the Association set forth several examples of the detrimental effects on the teachers' personal and financial welfare. These effects, such as lost employment opportunities, trip deposits, and altered family holiday plans were all alleged to be the result of the rescheduling of school days into what had previously been scheduled to be non-school days. While it is our understanding that this impact was not alleged as a separate unfair practice and thus does not alter our decision to dismiss the unfair practice charge which sought negotiation of the days themselves, we point out that these effects do constitute an impact on the employees which would require the Board to

negotiate with the Association prior to the implementation of the alteration in the school calendar. Such negotiations need not, as stated above, involve the actual change in the days but rather would be limited to ways to ameliorate the effects of these changes on the employees.[6/]

ORDER

For the above-stated reasons, the Commission hereby dismisses the instant complaint in its entirety.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hurwity and Parcells voted for this decision. Commissioner Hipp abstained. None opposed.

DATED: Trenton, New Jersey
March 16, 1978
ISSUED: March 17, 1978

6/ The Board, on the question of the change in teachers' work days as the impact of the change in calendar, had asserted that the contract language in Article 6, see footnote 4 supra, constituted the negotiation of any such impact and widened a waiver of the Association's rights in this regard. While we believe that there is some support for this argument as it relates to the actual days to be worked and the school calendar, we do not believe that the clause or any other language in the contract relied upon by the parties, envisioned the situation created by the snow emergency of this winter. Therefore, we do not believe that the contract relieves the Board of its obligation to negotiate with regard to the impact on the employees as discussed above, created by the unanticipated change in the calendar.

As this Commission has noted on numerous other occasions, the obligation to negotiate does not carry with it any obligation to agree to the proposals made by the other party. See State of New Jersey v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976).