

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH PLAINFIELD EDUCATION ASSOCIA-
TION,

Petitioner,

Docket No. SN-77-9

-and-

SOUTH PLAINFIELD BOARD OF EDUCATION,
Respondent.

SYNOPSIS

The Board of Education and the Education Association jointly initiated a scope of negotiations proceeding seeking a determination as to whether an issue concerning the continued employment of duty aides and the existence of a contract clause relating to their employment is within the scope of collective negotiations. This dispute arose during the course of collective negotiations for a successor agreement to replace the parties' prior contract which had expired on June 30, 1976. That agreement had contained a clause which pertained to the use of duty aides in sufficient numbers to enable teachers to be relieved of cafeteria and playground supervision. The parties had apparently reached an impasse with regard to the negotiability of this subject in their negotiations for a successor contract. The parties agreed to submit the duty aide issue to the Commission and to be bound by its decision.

The Commission determines that the continued employment of duty aides, who are not represented by the Association for purposes of collective negotiations, and the existence of a contract clause concerning their employment is not a mandatory subject of negotiations between the Board and the Association. However, the Commission further rules that the impact of the absence of such duty aides and the effect of the deletion of a clause requiring their employment for the purpose of relieving teachers of playground and cafeteria supervision does directly affect the workload and alter terms and conditions of the teachers' employment and that impact and effect is therefore a mandatory subject of collective negotiations with the Association as the majority representative of the teachers.

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Appearances:

For the Petitioner, Mandel, Wysoker, Sherman, Glassner, Weingartner and Feingold, P.A. (Mr. Richard H. Greenstein, of Counsel and on the brief)

For the Respondent, Jacob Green, Esq.

DECISION AND ORDER

On September 3, 1976 the South Plainfield Education Association (the "Association") and the South Plainfield Board of Education (the "Board") filed a joint Petition for Scope of Negotiations Determination^{1/} with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between them is within

1/ N.J.A.C. 19:13-3.1 states:

"As used in this Subchapter, the term 'petitioner' shall refer to the party initiating the proceeding or, in the case of a joint petition, the party contending that the disputed matter is within the scope of collective negotiations; the term 'respondent' shall refer to the other party to the proceeding."

As will become evident, the Association is the party urging the mandatory negotiability of the subject in dispute.

the scope of collective negotiations.^{2/}

The dispute before the Commission arose during the course of collective negotiations for a successor agreement to replace the parties' prior contract which had expired on June 30, 1976. That agreement contained a clause which pertained to the use of duty aides in sufficient numbers to enable teachers to be relieved of cafeteria and playground supervision. The clause in its entirety states:

ARTICLE XIX

NON-TEACHING DUTIES

A. Need for Duty Aides

The Board and the Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, the Board agrees, within the following limits, to provide the necessary services so that Teachers will be relieved of cafeteria and playground supervision which can be performed by duty aides.

B. Number of Duty Aides

The Board, in order to implement the above statement, agrees that during the duration of this contract it will provide duty aides for a minimum of two (2) hours per day for lunchroom and playground supervision in the following manner

- | | |
|-----------------------|-------------------------------|
| 1) Elementary Schools | Four (4) per school (minimum) |
| 2) Middle School | Five (5) (minimum) |
| 3) High School | Eight (8) (minimum) |

^{2/} The Commission's authority to render such determinations is set forth in N.J.S.A. 34:13A-5.4(d) which states: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

The negotiations dispute concerns the mandatory negotiability of the continuation of the use of the duty aides as set forth in the above quoted clause. The statement of dispute in the parties' joint petition reads as follows:

"Article XIX - NON-TEACHING DUTIES- of the contract just concluded (June 30, 1976) contains a provision for the use of aides. The parties agreed in the course of negotiations to delete and submit to PERC the question of this topic's mandatory negotiability. Furthermore, if not held mandatorily negotiable by PERC, the impact of deletion of the clause will be negotiated, if so held by PERC." 3/

Both parties have submitted legal argument on the issue presented. The Association, in its legal memorandum, has indicated that the Statement of Facts contained in the Board's brief is "essentially correct and sufficient for the purposes of determining whether or not the matter in question is within the Scope of Negotiations." Therefore, since no material factual dispute exists, we may proceed to the scope questions presented.

3/ The Commission notes that this use of the scope procedures is to be commended as being completely consistent with the purposes of N.J.S.A. 34:13A-5.4(d) and public policy of the Act. N.J.S.A. 34:13A-2. The parties have apparently reached an impasse with regard to the negotiability of this subject in their contract negotiations. However, in an attempt not to let this one obstacle block the path to a settlement, they have agreed to submit the issue to the Commission and to be bound by our decision. In the meantime, they are free to continue negotiations on the other proposals and hopefully to agree on a new contract.

Both parties correctly point out that issues related to the ones presented herein have been dealt with by the Commission in prior decisions. Both rely, for example, on In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976). The Board relies on that case and In re Board of Education of Borough of Tenafly, P.E.R.C. No. 76-24, 2 NJPER 75 (1976) for the point that the assignment of teachers to supervise students involves major educational policy considerations and is therefore a managerial prerogative, not a mandatory subject of negotiations. The Association also cites Byram Township for the proposition that a duty-free lunch period for teachers is a term and condition of employment and is mandatorily negotiable.

Both parties are accurate in relying on these arguments as relevant to the determination herein; however, we do not deem them to be addressed to the primary issue which must be resolved initially. While these two parties to this dispute are, of course, most concerned with the effect that the loss of duty aides will have on the teachers, the basic question involves the negotiability of the employment of the duty aides, and the continued existence of a clause in the parties' new agreement requiring their employment.

The resolution of this issue, given the circumstances of this case, depends in large part on the fact, agreed to by both parties, that the duty aides are not included in the collective negotiations unit represented by the Association. The

obligation of a public employer to negotiate terms and conditions of employment of its employees is owed to the majority representative of these employees in an appropriate unit. Since the Association does not represent the duty aides, or even claim to, their continued employment is not mandatorily negotiable with the Association.^{4/} Nor is the actual employment of duty aides, or in what number, a term and condition of the teachers' employment, so the matter is not mandatorily negotiable with the Association for that reason.^{5/}

The continued employment of the duty aides as set forth in the clause relating to their employment is therefore only a required subject of negotiations to the extent it has a direct effect on the teachers' terms and conditions of employment. Since Article XIX of the 1974-76 agreement between the parties clearly states that the purpose of having duty aides is to free teachers from cafeteria and playground supervision,

^{4/} We would also note that even if the Association did represent the duty aides, the actual number needed to carry out the function of adequate supervision of cafeterias and playgrounds would involve major educational policy judgments and would thus be permissive, rather than mandatory, subjects of collective negotiations. See In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976). In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Newark Firemen's Union of New Jersey, P.E.R.C. No. 76-40, 2 NJPER 139 (1976).

^{5/} In making this determination, we do not pass upon the negotiability of the possible cessation of the duty aides' employment with a majority representative of those employees if one exists. That whole question is not presented in this Petition.

it cannot be contested that their employment has a significant impact on the teachers' workload, which subject is a mandatorily negotiable term and condition of employment.^{6/} Therefore, the impact of the deletion of Article XIX on the teachers' terms and conditions of employment is a required subject of collective negotiations.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7, the Public Employment Relations Commission hereby determines that the continued employment of duty aides and the existence of a contract clause concerning their employment is not a mandatory subject of negotiations between the South Plainfield Board of Education and the South Plainfield Education Association.

However, the impact of the absence of such duty aides and the effect of the deletion of a clause requiring their employment for the purpose of relieving teachers of playground and cafeteria supervision does directly effect the workload and other terms and conditions of the teachers' employment and

^{6/} This wording of Article XIX, as quoted earlier, substantiates the point that it is the effect on the teachers' workload and other terms and conditions of employment and not the actual employment of the duty aides, which is the concern of the Association and the reason for the existence of that clause.

that impact and effect is therefore a mandatory subject of collective negotiations with the said Association as the majority representative of the teachers.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.
Commissioners Hipp and Hurwitz did not participate in this matter.

DATED: Trenton, New Jersey
December 21, 1976
ISSUED: December 22, 1976