P.E.R.C. NO. 85-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH BRUNSWICK TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-84-130

SOUTH BRUNSWICK TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that certain proposals the South Brunswick Township Education Association made during successor contract negotiations with the South Brunswick Township Board of Education are not mandatorily negotiable. These proposals concerned a determination whether and to what extent the Board needs the services of 10 month, non-administrative employees during the summer; employment of aides; supervision of students at lunch, on the playground, and getting on or off buses; and the number of coaches per sport.

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Appearances:
For the Petitioner, Cassetta, Brandon & Taylor
(Bruce Taylor, Consultant; Gary M. Whalen, on the Brief)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of Counsel)

DECISION AND ORDER

On June 15, 1984, the South Brunswick Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition alleges that several sections of a prior collective negotiations agreement between the Board and the South Brunswick Township Education Association ("Association") relate to non-mandatory subjects of negotiation.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's non-supervisory certified personnel. During successor contract negotiations, a dispute arose concerning the negotiability

of several contract provisions which the Association wished to carry over from the predecessor contract into the successor contract. The parties then entered a successor contract, with the proviso that the clauses now in dispute would be incorporated into that agreement if found to be mandatorily negotiable.

Article 8 of the predecessor contract is entitled Work Year. Article 8.B.2 provides, in disputed part:

> Effective July 1, 1979 the Board of Education shall employ members of this bargaining unit annually during the months of July and August for the continuity of the educational process through the summer months and for the smooth opening of school in September. The number of personnel employed shall work a total length of time equivalent to no less than 100 person weeks. Persons employed shall be paid at the weekly rate of 2 1/2% of their annual salary. This does not prohibit the Board of Education from employing additional members of the unit at 2 1/2% of the person's annual salary nor from employing members for training or special projects at a different pay rate.

Only the underlined portion of this article is now in dispute. Other sections of Article 8 set forth the work year and number of work days for teachers employed on either 10 or 12 month contracts.

The Board characterizes this language as a minimum manning provision, a clause requiring the filling of vacancies, and a limitation upon its ability to determine whether and to what extent a summer program shall be conducted. With respect to this last characterization, the Board cites In re Caldwell-West Caldwell Bd. of Ed., P.E.R.C. No. 80-64, 5 NJPER ___ (¶10276 1979), aff'd in pert. part, 180 N.J. Super. 440 (App. Div. 1981). It objects in particular that this clause would require it to employ employees on 10 month contracts during the summer.

The Association argues that this language defines the work year of unit employees. It cites Piscataway Twp. Bd. of Ed. v. Piscataway Twp. Principals Ass'n, 164 N.J. Super. 98 (App. Div. 1978). It argues in particular that this clause was meant to protect the work year of employees with 12 month contracts.

We agree with the Board that the underlined portion of Article 8.B.2 is non-negotiable insofar as it pertains to teachers and other non-administrative employees on 10 month contracts. We note that there is no dispute about those portions of Article 8 setting the number of workdays for teachers on 10 or 12 month contracts, and it has presumably been established which teachers receive 10 month contracts and which receive 12 month contracts.[1/] The determination of whether and to what extent the Board needs the services of 10 month, non-administrative employees during the summer is within the Board's managerial prerogatives. We specifically note that a provision requiring the Board to employ such personnel collectively for not less than 100 person weeks is a non-negotiable interference with the Board's ability to determine the extent of the educational services it will deliver and does not directly implicate the working conditions of any individual employee.

Article 9 is entitled Teaching Duties. The second sentence of Article 9.A reads: "It is the intent of the Board to continue to employ aides for the duration of the contract." Article 9.B. reads "The Board will make a reasonable effort to

1/ To the extent the clause preserves the expectation of employees with 12 month contracts that they will work a full year, the first sentence appears to be mandatorily negotiable. We focus on employees with 10 month contracts because they are the subject of the Board's expressed concerns.

reduce such duties as supervision of buses and playground." Article 9.C lists a series of duties teachers shall not be required to perform, including supervision of lunch rooms.

It is well-settled that a Board's decision to employ or not employ aides is not mandatorily negotiable. See, e.g., No. Bergen Bd. of Ed., P.E.R.C. No. 82126, 8 NJPER 397 (¶13181 1982). Article 9.A is not mandatorily negotiable because it commits the Board to employ aides during the life of the contract. It would only be negotiable if reworded to make clear that the Board's statement of intent is merely precatory.

It is well-settled that a board's decision to require teachers to supervise students while at lunch, on the playground, or getting on or off buses is not mandatorily negotiable provided that duty does not displace an employee's agreed-upon preparation period or other time free of pupil contact and provided the employer negotiates over compensation for that duty. See, e.g., Tenafly Bd. of Ed., P.E.R.C. No. 76-24, 2 NJPER 75 (1976) and Long Branch Ed. Ass'n v. Bd. of Ed. of Long Branch, 150 N.J. Super. 262 (App. Div. 1976), aff'd o.b. 73 N.J. 461 (1977). Sections B and C of Article 9 are not negotiable because they impermissibly restrict the Board's ability to require teachers to supervise students in the absence of any showing that such duty would increase pupil contact time or be uncompensated. In this regard, we note that the disputed sections of Article 9 do not directly implicate teacher workload and compensation, subjects governed elsewhere in the parties' contract.

Article 25,C.4 provides:

> The number of coaches for each sport shall include one (1) per team except football and track, which shall have two (2) coaches per team.

This provision limits the Board's ability to determine the size of the staff necessary to run extracurricular and athletic programs and is not mandatorily negotiable.

ORDER

Articles 8.B.2, 9.A (second sentence), 9.B, 9.C, and 25.C.4 are not mandatorily negotiable.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioners Graves and Wenzler were not in attendance.

DATED: Trenton, New Jersey
November 29, 1984
ISSUED: November 30, 1984