

P.E.R.C. NO. 89-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WATCHUNG HILLS REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-89-31

WATCHUNG HILLS REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that resurrection clauses in agreements between the Watchung Hills Regional High School District Board of Education and the Watchung Hills Regional Education Association are not mandatorily negotiable.

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Appearances:

For the Petitioner, DeMaria, Ellis & Hunt, Esqs.
(Brian N. Flynn, of counsel)

For the Respondent, John J. Thornton, Jr., UniServ
Representative, NJEA

DECISION AND ORDER

On December 1, 1988, the Watchung Hills Regional High School District Board of Education filed a Petition for Scope of Negotiations Determination. The Board seeks a declaration that a negotiations proposal submitted by the Watchung Hills Regional Education Association is not mandatorily negotiable.

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

The Association is the majority representative of two units of employees: (1) teaching staff members and (2) clerical employees, technicians and teachers' aides. The Board and the Association entered collective negotiations agreements covering these units during the 1978-79 and 1979-80 school years. The

teachers' agreement contained provisions setting the criteria for assignments and reassignments. The clerks' contract contained provisions guaranteeing extended sick leave and requiring that present employees be given due consideration before summer vacancies or promotional positions are filled.

The agreements covering the 1986-87 and 1987-88 school years did not include these provisions because the parties had agreed they were not mandatorily negotiable. But a miscellaneous provision in the teachers' contract recorded the parties' agreement that if "there is a change in the law during the term of this Agreement which would make negotiable any of the foregoing subjects, the provisions covering any such subjects will automatically be resurrected and made a part of this Agreement as of the effective date of such change in the law." A slightly different provision in the clerks' contract stated that if a change made any subject permissive, such permissive provisions would be automatically resurrected.

After the 1986-1988 contracts expired, the Board proposed deleting these resurrection clauses. The Association rejected this proposal. The parties have since reached new agreements, subject to the Board's right to file this scope petition.

The Board asserts that each of the disputed provisions in the 1978-80 agreements are not mandatorily negotiable and that the resurrection clauses therefore must be not mandatorily negotiable as well. The Association does not dispute that the earlier provisions

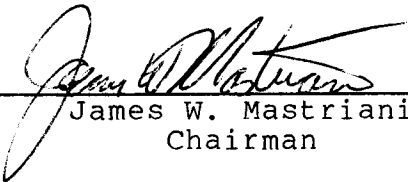
are not mandatorily negotiable, but asserts that the resurrection clauses are mandatorily negotiable.

Existing caselaw has established that clauses such as these are not mandatorily negotiable. Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-50, 9 NJPER 670 (¶14291 1983); Rahway Bd. of Ed., P.E.R.C. No. 84-6, 9 NJPER 531 (¶14217 1983). See also Rutgers, The State Univ., P.E.R.C. No. 76-13, 2 NJPER 13, 20 (1976). These cases control.

ORDER

The resurrection clauses in the 1986-88 contracts are not mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey
February 10, 1989
ISSUED: February 14, 1989