

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-072

FRANKLIN TOWNSHIP SUPPORT
STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain provisions in an expired collective negotiations agreement between the Franklin Township Board of Education and the Franklin Township Support Staff Association. The Commission finds not mandatorily negotiable: portions of a provision concerning filling vacancies by involuntary transfer or reassignment if there is a qualified volunteer available to fill the position and requiring the filling of a first vacancy by seniority; portions of an article that would limit the Board's right to deny a transfer request as opposed to an employee's procedural right to have a request considered, and portions of a provision dealing with transporting kindergarten students.

The Commission finds mandatorily negotiable a portion of an article that addresses notice of vacant positions and an article requiring that interested bus drivers' names be placed on an eligibility list by district seniority for field trips is mandatorily negotiable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, B. Michael Borelli, attorney, on
the brief

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Michael C. Damm, on the brief)

DECISION

On May 13, 2004, the Franklin Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that certain provisions in an expired collective negotiations agreement with the Franklin Township Support Staff Association are not mandatorily negotiable and cannot be included in a successor agreement.

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

The Association represents non-certified support staff. The parties' most recent agreement expired on June 30, 2004. They are in negotiations for a successor agreement.

The Board seeks the removal or revision of certain contract language that it asserts is not mandatorily negotiable. The disputed provisions address transfers, reassignments, field trips, and kindergarten route assignments. The Board argues that these articles have interfered with its managerial prerogative to select the most qualified employees for particular assignments. The Association asserts that, to a certain extent, the provisions are mandatorily negotiable.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states: "The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations." We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), lists the standards for determining mandatory negotiability:

[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]

In general, transfer criteria and transfer decisions are not mandatorily negotiable, but procedures pertaining to transfers, are. N.J.S.A. 34:13A-25; Local 195; Ridgefield Park; Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985); Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982). Our case law concerning the negotiability of transfers has also been applied to non-professional employees. See West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-133, 23 NJPER 436 (¶28199 1997); Deptford Tp. Bd. of Ed., P.E.R.C. No. 80-82, 6 NJPER 29 (¶11014 1980); Elizabeth Bd. of Ed., P.E.R.C. No. 84-154, 10 NJPER 441 (¶15197 1984). The underlined language is "of most concern" to the Board.

Article XIII is entitled Transfers and Reassignments. It provides:

A. Use of Voluntary Requests

No vacancies shall be filled by means of involuntary transfer or reassignment if there is a qualified volunteer available to fill said position.

B. Vacancy

1. When a vacancy occurs, employees will be offered the position by seniority in classification for the first vacancy only. Filling of any

vacancies occurring from the original will be at the Board's discretion.

C. Filing Requests

Employees who desire a transfer to another assignment may file a written statement of such desire with the School Business Administrator/Board Secretary. Such statement shall include the school or schools to which he desires to be transferred, in order of preference. Such requests for transfers and reassignments for the school year shall be submitted no later than five (5) working days after the posting of the vacancy. During the summer recess, vacancy postings shall be mailed to all ten month employees.

D. Criteria for Assignment

In the determination of requests for voluntary reassignments and/or transfer, the wishes of the individual employee shall be honored to the extent that the transfer does not conflict with the best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If an employee's request for transfer has been denied, a renewal or subsequent request made in the following year shall be granted under the condition made above, unless there is no available position to which the employee can be transferred or an adequate replacement for the employee cannot be obtained. If more than one employee has applied for the same position, the recommendation as to which employee shall receive it shall be made by a joint committee consisting of two (2) persons appointed by the School Business Administrator/Board Secretary and two (2) appointed by the Association.

The Board argues that Section A is not mandatorily negotiable because it interferes with its right to set standards or qualifications for employment, assignment, or transfer.^{1/} It claims that it requires the Board to disregard the qualifications of those who do not wish to be transferred or reassigned if a qualified individual is seeking a transfer or reassignment.

The Association contends that Section A is mandatorily negotiable where the Board has determined that there is an equally qualified pool of individuals to fill a position or where qualifications are not in issue and one of those applying is a volunteer. It argues that the clause is negotiable to the extent it applies to these circumstances.

By its terms, Section A applies to all vacancies and is not confined to the limited situations described by the Association. We do not read "qualified" to be the equivalent of "equally qualified." Section A is not mandatorily negotiable.

The Board argues that Section B is not mandatorily negotiable because it requires the use of seniority as a criterion for filling vacancies. The Association argues that Section B leaves all subsequent vacancy transfer decisions caused by the first vacancy under Section A to be filled at the Board's

^{1/} The Board cites N.J.S.A. 18A:27-4.1a. That statute governs the relationship between the Board and the superintendent or chief administrative officer in making personnel decisions.

discretion and therefore there is no basis for the Board's objection.

We agree with the Board. Section B bases the filling of the first vacancy on the criterion of seniority and that criterion is not mandatorily negotiable. As with A, this clause is not limited to situations where the eligible employees are equally qualified.

The Board concedes that Section C, standing alone, appears to be procedural. But, in light of the language of A, B, and D, it prefers its proposed language which would limit its responsibility for advertising vacancies to a posting within each school building and the mailing of a list of the vacancies to the Association President. It also argues that the requirement that vacancy notices be mailed to all ten-month employees is burdensome and unnecessary. The Association argues that this clause addresses procedural aspects of transfers and is mandatorily negotiable.

Section C addresses notice of vacant positions and is mandatorily negotiable. See State v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981); Byram, 152 N.J. Super. at 26; North Bergen Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97, 104 (App. Div. 1976). The Board may seek different language concerning its notice obligation in negotiations.

The Board argues that the first sentence of Section D appears to leave the final discretion in its hands. However, it argues that the second sentence establishes criteria and is not mandatorily negotiable. It also asserts that the last sentence requiring recommendations by a joint committee is not mandatorily negotiable because it does not recognize the Board's right to make the final decision. The Association argues that this section is mandatorily negotiable to the extent the support staff person seeking the position meets all of the qualifications determined by the Board, or where there are no special qualifications. It asserts that parties can negotiate a procedure for filling a position where there are equally qualified candidates or where there are no specific job qualifications.

The disputed portions of Section D are not mandatorily negotiable. They limit the Board's right to deny a transfer request as opposed to an employee's procedural right to have a request considered. Ridgefield Park; Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21, 23 (¶29014 1997); Piscataway Bd. of Ed., P.E.R.C. No. 87-151, 13 NJPER 508 (¶18189 1987). In addition, we have held that the exercise of managerial prerogatives cannot be delegated to joint employer-employee committees. See, e.g., City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div.

1981), certif. den. 88 N.J. 476 (1981)' (provision delegating staffing decisions to joint safety committee not mandatorily negotiable).

Article XXIII, Section D is entitled Field Trips. It provides:

The transportation supervisor shall distribute a field trip survey form to each bus driver at their initial meeting of each school year. The survey shall be returned no later than September 15 to the transportation supervisor. All interested drivers' names shall be placed on a building eligibility list by district seniority. Field trips shall be assigned according to this list on a rotating basis.

Article XXIII, Section E.1(d) provides:

A bus driver who is interested in being assigned a kindergarten run shall submit a written application to the SBA/BS in June for the following school year assignment. Assignments to kindergarten runs shall be based upon applications and seniority in the district as a bus driver. Assignment to a specific kindergarten run shall be made solely at the discretion of the Board.

Article XXIII, Section E.1(f) provides:

Upon the vacancy of a kindergarten run position, a posting shall be advertised. Assignment to the position shall be made based upon the district seniority of candidates responding to the posting.

The Board argues that these provisions are not mandatorily negotiable because they require seniority as a criterion for making assignments. It argues that support staff positions do not involve persons with presumptively equal qualifications. It

agrees that all bus drivers have a school bus driver's license, but that when it comes to the age of the children and the distance and circumstances of field trip driving, it has a right to determine which drivers are best qualified for the various situations. The Association responds that the provision deals with negotiable procedures for field trips and kindergarten assignments and the Board has not substantiated a need for any special qualifications, other than a bus driver's license. It concludes that clauses providing for assignments based on seniority from a group of employees with equal qualifications are mandatorily negotiable.

The disputed portion of Article XXIII, Section D is mandatorily negotiable. It provides that all drivers who return a survey to indicate their interest in driving students to and from field trips shall be listed in order of seniority. This sentence does not, in and of itself, require that field trips be assigned by seniority. The fourth sentence of the Section is not mandatorily negotiable because it requires that trips be assigned according to a seniority list on a rotating basis.

The disputed portions of Section E.1(d) and Section E.1(f) of Article XXIII are not mandatorily negotiable. The assignment of bus drivers to transport kindergarten students is a matter of educational policy. A commitment to make such assignments by seniority would significantly interfere with the determination of

that policy. Cf. Hawthorne Borough, P.E.R.C. No. 2004-33, 29 NJPER 513 (¶164 2003) (method of assigning bus drivers to transport senior citizens in non-overtime situations is not mandatorily negotiable).

ORDER

A. The following provisions are not mandatorily negotiable:

Article XIII, Sections A, B.1 (first sentence), and D (Second and Third Sentences);

Article XIII, Section D (fourth sentence);

Article XXIII, Section E.1(d) (second and third sentences); and

Article XXIII, Section E.1(f) (second sentence);

B. The following provisions are mandatorily negotiable:

Article XIII, Section C (third sentence); and

Article XXIII, Section D (third sentence).

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: September 30, 2004
Trenton, New Jersey
ISSUED: September 30, 2004