

P.E.R.C. NO. 2006-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-073

OLD BRIDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that the last sentence of a clause in the collective negotiations agreement between the Old Bridge Board of Education and the Old Bridge Education Association is mandatorily negotiable. The clause provides that suspensions, except in the case of tenure charges or criminal indictment, shall be with full pay. The Commission concludes that this clause is not preempted by the 1990 discipline amendments, N.J.S.A. 34:13A-22, and is not inconsistent with N.J.S.A. 18A:6-3.

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, Parker McCay, P.A., attorneys
(James F. Schwerin, on the brief)

For the Respondent, Bergman & Barrett, attorneys
(Michael T. Barrett, on the brief)

DECISION

On March 24, 2006, the Old Bridge Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that a clause in its current collective negotiations agreement with the Old Bridge Education Association is not mandatorily negotiable and cannot be retained in a successor contract. That clause provides:

Except in the case of tenure charges filed with the Commissioner of Education or a criminal indictment, any suspension of an employee will be with full pay.

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

The Association represents the Board's teachers, secretaries, custodians, and certain other positions. The current agreement is effective from July 1, 2003 through June 30, 2006. The parties are in negotiations for a successor agreement.

Article IV is entitled Employees' and Board's Rights.

Sections C and D provide:

C. No employee shall be disciplined, reprimanded, or reduced in rank or compensation without just cause.

D. Whenever any employee is required to appear before the Superintendent, Board or any committee or member thereof concerning any matter which may seriously or imminently adversely affect the continuation of the employee in his office, position, or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview. Such written notice shall inform the individual that he is entitled to have a representative of the Association present to advise him and represent him during such meeting or interview. Except in the case of tenure charges filed with the Commissioner of Education or a criminal indictment, any suspension of an employee will be with full pay.

The Association seeks to retain these sections in a successor contract while the Board asserts that the last sentence of Section D is illegal under N.J.S.A. 34:13A-22 et seq. and Atlantic Highlands Bd. of Ed., P.E.R.C. No. 93-40, 19 NJPER 7 (¶24005 1992), and thus must be excluded from the new contract.

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 sentence in question, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

In an earlier case involving these parties, Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-138, 14 NJPER 456 (¶19189 1988), we held mandatorily negotiable an earlier incarnation of the last sentence of Section D. At that time, the sentence provided:

Any suspension of a teacher shall be with full pay up to the time of termination.

We reasoned that the clause protected the employees' interests in due process and receiving their primary means of support until guilt or innocence was finally determined and that the clause did not significantly interfere with the employer's ability to discipline employees. See also Essex Cty., P.E.R.C. No. 87-156, 13 NJPER 579 (¶18213 1987). In Old Bridge, an arbitrator had ordered that two teachers suspended pending tenure proceedings be paid during the first 120 days of their suspensions.^{1/} The Commissioner of Education, however, subsequently determined that

^{1/} Under N.J.S.A. 18A:6-14, if tenure charges are not resolved by the Commissioner of Education within 120 days (excluding delays granted at the charged employee's request), then the board must resume paying the employee's full salary.

the proper penalty for one teacher's misconduct was a 120-day unpaid suspension and an increment withholding. We held that the award was within the scope of negotiations except to the extent it required the Board to restore the 120 days' pay to the teacher whose penalty had been approved by the Commissioner of Education.

Since 1988, the parties have renegotiated Section D to narrow its applicability to cases that do not involve tenure charges or criminal charges. The possibility of conflict with rulings by the Commissioner of Education appears to have been eliminated and the focus appears now to be on matters of minor discipline. The Board does not dispute that Old Bridge was correctly decided at the time, but asserts that amendments to the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., that took effect in 1990, N.J.S.A. 34:13A-22 et seq., preempt negotiations over matters of minor discipline in general and the last sentence of Section D in particular. Based on our review of the pertinent statutory provisions and legislative history, we disagree.

The two pertinent statutory provisions define "minor discipline" and authorize school boards to impose minor discipline if a negotiated agreement so provides. N.J.S.A.

34:13A-22 states:

"Minor discipline" includes, but is not limited to various forms of fines and suspensions, but does not include tenure charges filed pursuant to the provisions of

subarticle 2 of subarticle B of Article 2 of chapter 3 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14, letters of reprimand, or suspensions with pay pursuant to section 1 of P.L. 1971, c. 435 (C. 18A:6-8.3) and N.J.S. 18A:25-6.

N.J.S.A. 34:13A-24 states:

- a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.
- b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.
- c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10.

When the Assembly Labor Committee reported the bill that was enacted, it explained that "this bill expands the scope of negotiations for public school employees in matters relating to extracurricular activities and discipline, including increment

withholding."^{2/} It also explained that the bill authorized public schools to impose minor discipline such as fines and suspensions, if negotiated. See Statement of Assembly Labor Committee to Assembly Bill No. 4706.

Together, the statutory provisions and the legislative history demonstrate that the Legislature meant to permit rather than prohibit negotiations over minor discipline, including fines and suspensions. Provided that an authorizing agreement has been negotiated, the amendments permit boards to impose fines and suspensions without triggering tenure law protections against reductions in compensation. The amendments did not displace the boards' preexisting authority to impose reprimands since tenure laws did not cover those sanctions, unlike fines and suspensions.

The Board relies on Atlantic Highlands, in which we considered an article governing teacher discharges. The first sentence of that article provided that "[w]hen an employee's conduct warrants her discharge and none of the other contractual clauses are applicable, the Administrator shall suspend the employee with pay and immediately notify the Association and Board in writing." The article also made teacher discharges subject to binding arbitration. The Atlantic Highlands Board asserted that N.J.S.A. 18A:6-8.3, 18A:6-14, and 18A:25-6

^{2/} The amendments contained several other provisions we need not consider.

preempted negotiations,^{3/} but the Atlantic Highlands Association responded that the first sentence was merely meant to be a notice provision and it conceded that the rest of the article was non-negotiable except to the extent it applied to mid-contract discharges of nontenured teaching staff members. Given the parties' positions and the cited authorities, we held that the article was not mandatorily negotiable except to the extent it provided for written notice of suspensions and mid-contract discharges of nontenured teaching staff members.

Atlantic Highlands does not bar negotiations over the last sentence of Section D. Section D is consistent with the suspensions with full pay provisions of N.J.S.A. 18A:6-3 and not inconsistent with any other law; the 1990 amendments expressly authorize negotiations over suspensions; Atlantic Highlands did not consider the 1990 amendments; that decision was tied to the parties' arguments and concessions; and Section D excludes the type of proceedings (criminal indictments and tenure charges) that were not excluded by the article in Atlantic Highlands.

3/ N.J.S.A. 18A:6-8.3 provides for full pay for employees suspended pending any investigation, hearing, trial or appeal unless an employee is facing a criminal indictment or tenure charges. N.J.S.A. 34:13A-6-14 has already been described. N.J.S.A. 18A:25-6 authorizes boards to suspend employees, but does not address whether such suspensions are to be with or without pay.

For these reasons, we hold that the last sentence of Section D is mandatorily negotiable and is not preempted.

ORDER

The last sentence of Article IV, Section D is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

ISSUED: June 29, 2006

Trenton, New Jersey