P.E.R.C. NO. 2012-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS HILLS REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2011-012

MORRIS HILLS REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment relations Commission determines the negotiability of three contract article that the Morris Hills Regional Education Association seeks to include in a successor agreement with the Morris Hills Regional Board of Education. The Commission holds that the proposals regarding the teacher work year and class schedules are not mandatorily negotiable. The proposal regarding teacher work hours 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, Taylor, Whalen and Hybbeneth (Garry M. Whalen, Consultant)

For the Respondent, Bucceri & Pincus, attorneys (Gregory Syrek, of counsel)

DECISION

On November 8, 2010, the Morris Hills Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that provisions of an expired collective negotiations agreement between it and the Morris Hills Regional Education Association are not mandatorily negotiable and may not be included in a successor agreement.

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

The Association represents the Board's certified and non-certified personnel. The Board and the Association are parties to a collective negotiations agreement that expired on

June 30, 2010. The parties reached agreement on a new contract on all issues and agreed to file a scope petition on the articles the Board sought to have removed from the contract.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

> [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]

Article 16 is entitled Teacher Work Year. Paragraph A. 1 provides in pertinent part:

> The teacher work year shall not include the week referred to as "Presidents' Week", which for the term of this Agreement falls February 18-22, 2008, February 16-20, 2009 and February 15-19, 2010.

The Board asserts that this provision interferes with its managerial prerogative to set the school calendar. It cites Burlington Cty. College, 64 N.J. 10 (1973), Englewood Bd. of Ed.,

P.E.R.C. No. 98-76, 24 NJPER 21(¶29014 1977) and Willingboro Bd. of Ed., P.E.R.C. No. 92-48, 17 NJPER 497 (¶22243 1991).

The Association asserts that this provision is mandatorily negotiable as it relates to holiday and/or vacation time for employees. The Association concedes that the Board could require its members to work during that week, but that it would then be able to demand negotiations for extra compensation and/or reimbursement incurred by employees who arrange to be away during this week. The Association relies on Roselle Bd. of Ed., P.E.R.C. No. 2003-20, 28 NJPER 417 (¶33152 2002), Rockaway Tp. Bd. of Ed., P.E.R.C. No. 2001-6, 26 NJPER 362 (¶31145 2000), City of Newark, P.E.R.C. No. 2002-40, 28 NJPER 134 (¶33041 2002) and Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989).

Establishing the school calendar in terms of when school ends and begins is not mandatorily negotiable. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); cf. Burlington Cty. College. Included in the prerogative that the Board has to set the school calendar is the determination of when the schools will be closed for vacation. The cases cited by the Association relate to either non-education employers or vacation denials. Thus, we find Article 16, paragraph A.1. to be not mandatorily negotiable.

Article 17 is entitled "Teaching Hours and Teaching Load" and the first two paragraphs provide:

> Beginning in the 1996-1997 school year, an alternate day block schedule which will involve A and B days scheduled on consecutive school days may be implemented.
>
> Should the alternate block schedule not be implemented or is abandoned the 1995-96 language of Article XVII shall continue.

The Board asserts that it has a managerial prerogative to set class schedules and that the language requiring it to return to the former schedule interferes with this prerogative. The Board relies on South Brunswick Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238(¶28114 1997), Wayne Tp. Bd. of Ed., P.E.R.C. No. 89-36, 14 NJPER (¶19274 (1988) and Lincoln Park Bd. of Ed., P.E.R.C. No. 78-88, 4 NJPER (¶4131 1978).

The Association responds that it is logical that the language is negotiable since it returns the parties to their original positions prior to the implementation of block scheduling so that the 1995-1996 schedule is the base line for negotiations if the block schedule is eliminated.

A school board has a prerogative to determine the structure of the school day and to establish block scheduling. Elizabeth Bd. of Ed., P.E.R.C. No. 2004-9, 29 NJPER 389 (¶123 2003), Jersey City School Dist., P.E.R.C. No. 97-151, 23 NJPER 396 (¶28182 1997); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 97-117, 23 NJPER 238 (¶28114 1997). Thus, it follows that the Board has a prerogative to eliminate block scheduling and develop another schedule that meets its educational policy objectives.

Accordingly, this section of Article 17 is not mandatorily negotiable.

We agree with the Association that terms and conditions of employment impacted by the Board's scheduling decisions are mandatorily negotiable, but the Board is not required to agree to return to its former schedule if it eliminates block scheduling. See South Brunswick (arbitrator may hear grievance asserting board violated contract by assigning block schedule calling for more than four instructional periods in a row); Jersey City (compensation for alleged workload increase under block schedule legally arbitrable). See also Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976); Westfield Bd. of Ed., P.E.R.C. No. 2002-41, 28 NJPER 135, 137 (¶33042 2002); Middletown Tp. Bd. of Ed., P.E.R.C. No. 98-74, 24 NJPER 19 (¶29013 1997); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd NJPER Supp.2d 225 (¶196 App. Div. 1990); Ramsey Bd. of Ed., P.E.R.C. No. 85-119, 11 NJPER 372 (¶16133 1985), aff'd NJPER Supp.2d 160 (¶141 App. Div. 1986); Lincoln Park Bd. of Ed., P.E.R.C. No. 85-54, 10 NJPER 646 (¶15312 1984); Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 83-102, 9 NJPER 104 (¶14057 1983).

Article 17 is entitled "Teaching Hours and Teaching Load." Paragraph A.3 provides:

> Except [as] otherwise provided in this agreement, the teacher day shall not begin

> earlier than 7:15 [a.m.] nor extend beyond 3:15 [p.m.].

The Board proposed to change these times to 7:00 a.m. and 3:30 p.m., respectively, to permit it to assign certain teachers, nurses, counselors and librarians to be more accessible to students. The Board asserts that it will maintain the daily contractual working hours of seven hours and two minutes so that a teacher required to report at 7:00 a.m. would be released seven hours and two minutes later. The Board relies on Hoboken Bd. of Ed., P.E.R.C. No. 93-15, 18 NJPER 446 (¶23200 1992) where we restrained arbitration to the extent that it challenged the Board's decision to change the hours during which its facilities and resources would be available and to require a certain number of qualified employees to work during those hours. We further held that the Board had to negotiate over which qualified employees would work what hours and how much they were to be paid for those hours.

The Association responds that work schedules, including start and end times are mandatorily negotiable as employees have a substantial interest in their work schedules. It further asserts that Hoboken is distinguishable because it did not involve a negotiations proposal to establish work hours, but rather a situation where the employer sought to require specific employees to work outside the negotiated work day. It relies on Tp. of Pemberton, P.E.R.C. No. 87-127, 13 NJPER 322 (¶18133

1987); Borough of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶16254 1985); State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985); Clifton Bd. of Ed., P.E.R.C. No. 87-112, 13 NJPER 273 (¶18113 1987); Verona Bd. of Ed., P.E.R.C. No. 86-91, 12 NJPER 196 (¶17074 1986) and Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985).

Public employers have a prerogative to determine the hours and days during which a service will be operated and to determine the staffing levels at any given time. But within those limits, work schedules of individual employees are, as a general rule, mandatorily negotiable. Local 195; see also Woodstown-Pilesgrove; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6-7 (1973); Burlington Cty. College. On balance, we find the Board's proposal to be mandatorily negotiable as it reflects the negotiated work hours for the majority of unit members. The Board maintains a prerogative to assign individual employees to different hours so that it may provide services to students when it deems most appropriate, but the Board's proposal for the overall work hours for the unit is mandatorily negotiable. Hoboken Bd. of Ed.

ORDER

Article 16, Paragraph A. 1 is not mandatorily negotiable;

Article 17, first two unnumbered paragraphs are not mandatorily negotiable;

Article 17, Section A.3 is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Krengel, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself.

ISSUED: September 22, 2011

Trenton, New Jersey