

P.E.R.C. NO. 2013-93

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPEWELL VALLEY REGIONAL  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2012-077

HOPEWELL VALLEY EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of contract clauses in an expired collective negotiations agreement between the Hopewell Valley Regional Board of Education and the Hopewell Valley Education Association. The disputed clause concerns the removal of derogatory materials from personnel files after three school years. The Commission holds that this clause is not mandatorily negotiable because an employer has an interest in maintaining a record of prior disciplinary actions for consideration in connection with future employment actions, and enforcement of this expungement clause would substantially limit the Board's policymaking powers.

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, attorneys (Richard E. Golden, of counsel)

For the Respondent, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, of counsel)

DECISION

On June 22, 2012, the Hopewell Valley Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a ruling that a clause in its expired collective negotiations agreement with the Hopewell Valley Education Association is not mandatorily negotiable. The clause concerns the removal of derogatory materials from an Association member's personnel file after three school years. The parties have reached a Memorandum of Agreement for a new contract that submits this scope of negotiation dispute to us.

The parties have filed briefs. The Board has filed exhibits and the certification of Assistant Superintendent Richard Lang. The following facts appear.

The Board proposed removing the underlined portion of Article V, Section F, Teachers Rights:

No material derogatory to a teacher's conduct, character, or personality shall be placed in his/her personnel file unless the teacher has had an opportunity to review the material. Teachers shall also have the right to submit a written answer to such material within ten (10) days following the conference. His/her answer shall be reviewed by the Superintendent and attached to the file copy. This material will stay in the teacher's file for three (3) school years.

The Association rejected the Board's proposal and seeks to maintain the language in the successor agreement.

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).

The Board argues that the underlined clause is not mandatorily negotiable as it has a managerial prerogative to maintain a record of prior disciplinary history. The Association

responds that the clause is mandatorily negotiable as it relates to a grievance and disciplinary review procedure.

This provision is not mandatorily negotiable. We have consistently held that contract clauses requiring public employers to expunge or destroy disciplinary documents are not mandatorily negotiable. An employer has an interest in maintaining a record of prior disciplinary actions for consideration in connection with promotions, reemployment, or perhaps, to defend itself against allegations that it failed to take appropriate disciplinary action. Borough of Highland Park, P.E.R.C. No. 99-93, 25 NJPER 237 (¶30099 1999); Montgomery Tp., P.E.R.C. No. 99-19, 24 NJPER 452 (¶29209 1988); South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); City of Jersey City, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1983). Moorestown Bd. of Ed., P.E.R.C. No. 94-21, 19 NJPER 455 (¶24215 1993). Employees may negotiate for the opportunity to review their personnel files and request the removal of inappropriate material, and they may also seek a progressive discipline system discounting reliance on stale infractions. Rutgers, the State Univ., P.E.R.C. No. 91-74, 17 NJPER 156 (¶22064 1991). But, as a rule, removal of disciplinary or evaluative information from personnel files is not mandatorily negotiable.

The Association distinguishes this clause as it relates to "derogatory material" and could include unsubstantiated

complaints from parents and evaluative materials, but this provision is not so limited on its face. Enforcement of this expungement clause would substantially limit the Board's policymaking powers. Winslow Tp. Bd. of Ed., 2000-95, 26 NJPER 280 (¶31111 2000).

ORDER

The underlined portion of Article V, Section F is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: June 27, 2013

Trenton, New Jersey