P.E.R.C. NO. 2014-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BETHLEHEM TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-2011-458

BETHLEHEM TOWNSHIP
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the Bethlehem Township Board of Education's motion for summary judgment and denies the Bethlehem Township Education Association's cross-motion in an unfair practice case filed by the Association. The charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1) and (5), when it unilaterally set the 2011-2012 school year to start for students on August 25 and for teachers on August 24 in order to match the calendar of the regional high school. The Commission dismisses the Complaint finding that the Board has a nonnegotiable managerial prerogative to set the calendar and the parties' agreement supported the Board's argument.

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 Respondent, Schenck, Price, Smith & King, LLP, attorneys (Marc H. Zitomer, of counsel)

For the Charging Party, Oxfeld Cohen, P.C., attorneys (Randi Doner April, of counsel)

DECISION

This case comes to us by way of the Bethlehem Township Education Association's motion for summary judgment and the Bethlehem Township Board of Education's cross-motion for summary judgment in an unfair practice case the Association filed against the Board. The unfair practice charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:3A-1 *et seq.*, specifically 5.4a(1) and (5), when it set the 2011 to 2012 school year to start for students on August 25, 2011, and for teachers on August 24, in order to have the District's schedule match that of North Hunterdon High School

where District students in grades nine through eleven are taught.[1/] The charge alleges that the Board acted without prior negotiations with the Association over the schedule change or the impact of the change on employees represented by the Association.

The Board is a K-8 district. Students residing within the District in grades 9-12 attend North Hunterdon High School, part of the North Hunterdon-Vorhees Regional High School District. The Board and the Association are parties to a collective negotiations agreement in effect from July 1, 2008 through June 30, 2011. Article 8.I, "Work Year, Work Day and Assignment," as it applies to teachers, provides:

> A. In School Work Year
>
> > 1a. The school calendar shall be established by the Board upon the recommendation of the Superintendent after his/her consultation with representatives of the Association. However, the Board and the Association recognize that the established calendar may be altered due to inclement weather, or other cause, which necessitates the cancellation and rescheduling of school sessions.

The Board had received inquiries from parents who had children attending both schools in the Bethlehem district and North Hunterdon High School about having Bethlehem change its

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. . . and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. . ."

school year to coincide with the North Hunterdon calendar. At its September 21, 2010 public meeting, the Board discussed changing the 2011-2012 school calendar to match that of North Hunterdon High School, which had a calendar that began in August. Subsequently, the Superintendent sent surveys to district residents and to teaching staff concerning the proposed change. Residents responded to the surveys, but the teachers did not.

Two of the Association representatives certify that the teachers did not respond because the survey did not include an option that the school year start in September; only August dates were listed.

On December 16, 2010, the Board approved a start date of August 25, 2011 for the 2011-2012 school year. A complete school calendar was adopted on February 17, 2011.

The former Superintendent certifies that she consulted with the Association several times while the Board was contemplating the school calendar change. Association representatives certify that the Board did not negotiate either the change in start date or the impact of the change with the Association.[2/] On June 3, 2011, the Association filed its charge.

2/ One of the Association certifications states "the change in start date has affected not only the time of year that teachers are required to work, but also vacation schedules and the length of time between the first working day of the academic year and the receipt of the first paycheck."

Initially, we reject the Board's procedural defense that the charge was untimely. We hold that as both the vote to change the start date of the school year to August 25, 2011 and the vote on the full school year calendar occurred within six months of the date the Association filed its charge, the filing was made within the period allowed by N.J.S.A. 34:13A-5.4c.

For the following reasons we will deny the Association's request for summary judgment, but grant the Board's motion and will dismiss the complaint.

The change in start date was not subject to the Act's negotiations obligation as the adoption of a school calendar is a managerial prerogative.[3/]

3/ Burlington County College Faculty Association v. Board of Trustees, Burlington County Colleges, 64 N.J. 19 (1973), does not support the Association's claim that while a district may open schools in August it must negotiate if it wants teachers to be present. Public schools operate differently than colleges, where "full-time" faculty do not work every day that students are present. In a public school, when students are present, all full-time teachers normally work. The negotiable issue that usually arises in calendar cases is how many days teachers will work within the confines of the calendar. Id. at 12; In re Greenbrook Township Board of Education, P.E.R.C. No. 77-11, 2 NJPER 288 (1977). In addition, Burlington, 64 N.J. at 15-16, approvingly quotes Biddeford v. Biddeford Teachers Ass'n, 304 A.2d 387, 421 (Maine Supreme Court 1973) holding:

> Thus, the commencement and termination of the school year and the scheduling and length of intermediate vacations during the school year, at least insofar as students and teachers are congruently involved, must be held matters of "educational policies" bearing too substantially

(continued...)

In support of its claim that the Board violated the Act by failing to negotiate the impact of calendar change, the Association relies on Piscataway Tp. Educ. Ass'n v. Piscataway Tp. Bd. of Ed., 307 N.J. Super. 263 (App. Div. 1998). That case also involved a change in the school calendar but arose in a significantly different context.

In Piscataway, the 1993-1994 academic year had commenced under a school calendar that included three days that could be used if schools were closed for inclement weather. However, because of a harsh winter, school was closed on nine days in January, three in February and one in March, meaning nine school days had to be rescheduled. 307 N.J. Super. at 267-268.

In light of the days already lost and concerned about additional bad weather, the Piscataway administration, in late January, considered how to reschedule school days. It planned to convert two scheduled holidays in February and one in April to school days and add five school days in late June to the end of the previously scheduled school year. Although the Association was advised of the proposed change, the Board did not engage in

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3/ (...continued)
upon too many and important non-teacher interests to be settled by collective bargaining or binding arbitration.

negotiations over the change or the impact of the change on the employees which included disruption of booked travel plans.[4/]

Citing an earlier Commission case, Edison Tp. Bd. of Ed. and Edison Tp. Ed. Ass'n, P.E.R.C. No. 79-1, 4 NJPER 302 (¶4152 1978), rev'd, NJPER Supp.2d 66 (¶47 App. Div. 1979), certif den. 82 N.J. 274 (1979) the Piscataway court (307 N.J. Super. at 273) listed examples of how such a schedule change prompted by bad weather closings, affected employees' personal and financial welfare and later held (Id. at 276) that such effects were mandatorily negotiable and severable from the decision to alter the calendar:[5/]

4/ Inviting adversely affected staff to submit requests the Board, in some cases, approved the use of vacation, personal or unpaid leave. They included situations where tickets could not be refunded. However the Piscataway board refused to negotiate with the Association over the schedule changes or the decisions to grant the special requests

5/ Based upon the reasoning of In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979), holding that all impacts of a managerial decision are non-negotiable, these effects were ultimately held not mandatorily negotiable in Edison and in a similar dispute, Sayreville Bd. of Ed. and Sayreville Ed. Ass'n, P.E.R.C. No. 78-41, 4 NJPER 70 (¶4034 1978), aff'd NJPER Supp.2d 58 (¶38 App. Div. 1979). However, the Piscataway court, 307 N.J. Super. at 276, relying on Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980), rejected Maywood's holding that all impacts of a managerial decision are non-negotiable. It held that the obligation to negotiate the impact of a calendar change should be considered case-by-case with an examination of whether negotiations would impede management's right to establish the school calendar.

> [T]he Association set forth several examples of the detrimental effects on the teachers' personal and financial welfare. These effects, such as lost employment opportunities, trip deposits, and altered family holiday plans were all alleged to be the result of the rescheduling of school days into what had previously been scheduled to be non-school days. . . [T]hese effects do constitute an impact on the employees which would require the Board to negotiate with the Association prior to the implementation of the alteration in the school calendar. Such negotiations need not, as stated above, involve the actual change in the days but rather would be limited to ways to ameliorate the effects of these changes on the employees.

The facts and circumstances of this dispute are different from Piscataway and other cases involving unplanned calendar changes. These facts are similar to those present in Sayreville Bd. of Ed. and Sayreville Ed. Ass'n, P.E.R.C. No. 78-41, 4 NJPER 70 (¶4034 1978), aff'd NJPER Supp.2d 58 (¶38 App. Div. 1979). There the Association filed an unfair practice charge alleging that the Board violated the Act's duty to negotiate when it changed the school calendar so that the teacher work year began before, rather than after, Labor Day. The Sayreville contract contained this language:

ARTICLE VI, SCHOOL CALENDAR

> A. The School calendar shall be prepared by the Superintendent who shall elicit the participation of the Association prior to the final adoption of said calendar by the Board.
>
> B. School calendar shall be set forth in Schedule B, except in cases of emergency, but

> in any event shall include 183 teacher pupil contact days.

The Sayreville Hearing Examiner framed this issue:

> Did the Board commit an unfair practice within the meaning of the Act when it unilaterally adopted a school calendar for the 1976-77 and 1977-78 school years which changed the day for all teachers to report from a day after Labor Day to the Thursday before Labor Day, without negotiating with the Association the impact, if any, upon the teachers in the negotiating unit?

The Commission, reviewing the Hearing Examiner's recommendation to dismiss the unfair practice complaint agreed that the establishment of the school calendar, including having the work year start before Labor Day was not mandatorily negotiable. And, while holding that the impact of school calendar changes may be mandatorily negotiable, it concurred with the Hearing Examiner's conclusion, that, under the specific facts of the case, the Association failed to show that the Board, in adopting the calendar, had deviated from the procedure set by Article VI. 4 NJPER at 72.

The contract language here, which was in effect when this dispute arose, is quite similar to the school calendar clause in Sayreville. The undisputed facts show that the Association was aware of the Board's actions that culminated in the alignment of Bethlehem's 2011-2012 calendar with that of North Hunterdon. While it is clear that teachers were surveyed about the

contemplated change, the Board additionally asserts that it consulted with Association representatives. The Association does not directly respond to this claim, but instead maintains that no negotiations occurred.

"Negotiations" and "consultations" are apples and oranges; i.e. they connote different levels of interaction.[6/] It is clear to us that the pertinent contract article does not require negotiations over school calendar changes. And, other than delayed receipt (by a matter of days) of the first paycheck for 10-month employees, the Association has not identified what specific impacts on the work and welfare of its members were occasioned by the calendar change. Compare the effects of the changes in the cases involving mid-year calendar changes prompted by bad weather.

As the Association bears the burden of proof, we conclude that the undisputed material facts, together with the relevant contract language and the pertinent court and Commission

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6/ Where employees are organized, an employer must normally satisfy any obligations to notify, consult or negotiate through the majority representative, rather than individual or groups of employees. We need not address this principle here as the Association has failed to prove: (1) that the Board's actions were inconsistent with its rights under Article 8; and (2) show with sufficient specificity that there were impacts on employee work and welfare produced by, but severable from, the change in the school calendar.

precedents, establish that the Board did not, as a matter of law engage in unfair practices.

ORDER

The complaint against the Bethlehem Township Board of Education is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioners Bonanni and Wall recused themselves.

ISSUED: January 30, 2014

Trenton, New Jersey