P.E.R.C. NO. 2017-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST MORRIS REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2016-081

WEST MORRIS REGIONAL EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contract clause setting forth specific school year start and end dates in an expired collective negotiations agreement between the Board and the Association. The Commission holds that the disputed clause cannot be maintained in a successor agreement because the setting of a school calendar is a non-negotiable managerial prerogative.

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, Cleary, Giacobbe, Alfieri & Jacobs, LLC, attorneys (Matthew J. Giacobbe, of counsel and on the brief; Gregory J. Franklin, of counsel and on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (John Branigan, IV, of counsel and on the brief)

DECISION

On June 20, 2016, the West Morris Regional High School Board of Education ("Board") petitioned for a scope of negotiations determination. The Board seeks a determination that language detailing the start and end date of the school year in the most recent collective negotiations agreement between the Board and the West Morris Regional Education Association ("Association") cannot be maintained in a successor agreement.

The Board and Association filed briefs.[1/]

The Association represents certified teaching personnel, including teachers, guidance counselors, child study team personnel, school nurses, substance abuse educators, athletic trainers, librarians, coaches, and co-curricular staff, excluding all administrative and supervisory personnel and non-certified staff.

The Board and the Association are parties to a collective negotiations agreement with a term of July 1, 2013 to June 30, 2016, and are currently in negotiations for a successor agreement. The Board seeks to remove the following underlined language only from Article VII, "Work Year/Work Day/Work Load", Section A:

> Effective July 1, 2004, teachers employed on a 10 month basis shall be employed from September 1 through June 30 and shall report to work in accordance with the calendar adopted by the Board not to exceed 184 days of work for teachers, and not to exceed 181 days of instruction for students.

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."

1/ N.J.A.C. 19:13-3.6(f)1 requires all pertinent facts to be supported by certifications based on personal knowledge. Neither the Board or the Association filed a certification in this case.

In addition, we do not consider the wisdom of the contract language in question, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

The Board argues that the setting of a school calendar is a managerial prerogative. The Association responds that changing the school calendar will negatively impact its members, the Board should be bound to the clause for the remainder of the Agreement, and the clause should be negotiable due to past practice.[2/]

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982) 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.

2/ The Association also argues that the Board cannot change the number of days that the teaching staff works per year. Since the Board seeks only to remove the clause "shall be employed from September 1 through June 30" from Article VII we need not address this argument.

The Board seeks only to remove the clause specifying that teachers "shall be employed from September 1 through June 30". Our inquiry in this case triggers the third prong of the Local 195 test. It is well-settled that the setting of a school calendar in terms of when school begins and ends is a non-negotiable managerial prerogative. Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 2014-47, 40 NJPER 337 (¶123 2014), aff'd 42 NJPER 71 (¶18 2015), Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 592-93 (1980); 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); Piscataway Twp. Educ. Ass'n v. Piscataway Twp. Bd of Educ., 307 N.J. Super. 263, 265 (App. Div. 1998).

In Burlington Cty. College Faculty Ass'n v. Burlington Cty. College Bd. of Trustees. 64 N.J. 10, 15-16 (1973), quoting Biddeford v. Biddeford Teachers Ass'n, 304 A.2d 387, 421 (Me. Sup. Jud. Ct. 1973)(Wernick, J. concurring and dissenting), the Court found as follows:

> 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 upon too many and important non-teacher interests to be settled by collective bargaining or binding arbitration.
>
> [Ibid.]

We also note that N.J.S.A. 18A:36-2 expressly states that "the board of education shall determine annually the dates, between which the schools of the district shall be open. . . ."

The Association relies on Piscataway, 307 N.J. Super. at 267-268, to support its assertion that the impact of any schedule change must be negotiated. Because of several school days that had been lost due to weather emergencies, the Superintendent in Piscataway revised the school calendar mid-year by canceling scheduled holidays, and adding days to the end of the school year. Finding that the schedule changes impacted employees' personal and financial circumstances, including the disruption of booked travel plans, the court found that the impact of the calendar change was mandatorily negotiable and severable from the decision to alter the calender. The facts of this case do not resemble the unusual circumstances confronted by the court in Piscataway, and any potential impact to Association members from a possible future calendar change is speculative only.

Finally, the Association asserts that because the contested clause appears in the most recent agreement, and is a past practice as it has been part of previous negotiations, it must be maintained. However, the contested clause is not enforceable as it relates to a non-negotiable managerial prerogative.

ORDER

The language "shall be employed from September 1 through June 30" from Article 2, Section A of the collective negotiations agreement between the West Morris Regional High School Board of Education and the West Morris Regional Education Association is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Bonanni and Wall recused themselves. Commissioner Eskilson was not present.

ISSUED: December 22, 2016

Trenton, New Jersey