

P.E.R.C. NO. 2018-44

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN LAKES BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2018-026

FRANKLIN LAKES EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Fogarty & Hara, attorneys (Stephen R. Fogarty, on the brief)

For the Respondent, Springstead & Maurice, Esqs., attorneys (Alfred F. Maurice, of counsel and on the brief; Lauren McGovern, of counsel and on the brief)

DECISION

On January 5, 2018, the Franklin Lakes Board of Education petitioned for a scope of negotiations determination. The Board seeks to restrain binding arbitration of a grievance filed by the Franklin Lakes Education Association. The grievance asserts that the Board violated past practice and the parties' collective negotiations agreement when it had the 2017-2018 teacher work year start with a Professional Development Day (PDD), eliminating an alleged duty-free "pack and clean" day from the end of the work year.<sup>1/</sup>

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<sup>1/</sup> The Association President certifies that on the last work day "staff was permitted to pack and clean their rooms."

The parties have filed briefs, certifications and exhibits.<sup>2/</sup> These facts appear. The Association represents the Board's teachers, instructional aides and administrative assistants. The Board and the Association are parties to a collective negotiations agreement (CNA) with a term of July 1, 2014 to June 30, 2017. The CNA has a grievance procedure that ends in binding arbitration.

Article VI.A.11 provides in part:

There shall be two (2) Professional Days scheduled per year. The programs for each day will be determined by the District's Professional Development Committee. These Professional Days will not be scheduled on a Saturday or Sunday.

This dispute stems from the Board's decision to alter the teacher work year for the 2017 to 2018 school term as follows.

The first 2017-2018 school calendar (initial calendar) showed that the teacher work year would start on September 5, 2017 with a PDD and end on June 25, 2018 after the student school year had ended. On March 16, 2017 the Board altered the calendar (revised calendar). The revised calendar began the work year with an August 31, 2017 PDD and provided that the last day for both students and teachers would be June 22, 2018. The certification filed by the superintendent of schools asserts that

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<sup>2/</sup> The Association has sought an evidentiary hearing. However, it does not specify disputed factual issues warranting a hearing. We deny its request. See N.J.A.C. 19:13-3.7

the change in the calendar was made "to ensure that adequate time was available to provide necessary training to staff members for the successful opening of the 2017-2018 school year."

The printed calendar displays the first five months (September to January) on the left hand side of the page and the last five months (February to June) on the right hand side. In between the columns are a listing of important dates, including holidays, recesses and explanations of the dates that are specially marked. Pertinent to this dispute is that both the initial and revised calendars, as well as the calendars submitted by the parties covering prior school years, show an oval around any date when teachers are scheduled to work, but students are not in school. At the bottom of the center portion of the page are notes explaining other designations: dates in gray shading show that schools are completely closed and dates bisected with a "\\" are "minimum" dates when student instructional hours are reduced.<sup>3/</sup> Not all dates with special markings are treated the same.

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3/ After student dismissal on some minimum days, teachers would perform particular tasks including parent-teacher conferences or professional development. On other minimum days, no specific tasks or activities were listed. The initial and revised calendars for 2017 to 2018 are identical as to the number of minimum days, the dates on which they would occur and the activities listed for teachers on those dates.

The initial calendar for 2017-2018, approved by the Board on February 28, 2017, indicated that the teacher work year would begin on September 5, 2017 with a PDD, when students were not present. Another PDD would occur on September 6, with students reporting for school on September 7. The last work day for teachers, June 25, 2018, would be, as it had been in prior years, a day when only teachers would be present. The initial calendar showed that the last day for students would be June 22, 2018, the next to last day of the teacher work year. It was designated as a "minimum day" (i.e. one of several when students leave early).

The revised calendar for 2017-2018 was adopted on March 16, 2017 and made the following changes:<sup>4/</sup>

The work year would begin for teachers on August 31, 2017 with a PDD, followed by PDDs on both September 5 and 6. The last day for both students and teachers would be June 22, 2018, a minimum day.

A comparison of the calendars shows the following dates when a PDD would occur on dates when students were not present.

Initial Calendar

Revised calendar

9/5, 9/6, 2017 & 1/15, 2018

8/31, 9/5, 9/6, 2017 & 1/15, 2018

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4/ The calendar revision did not change:

- The number of teacher work days;
- The number of days of teacher-student contact;
- Teachers' annual compensation.

On April 4, 2017, the Association filed a grievance alleging a violation of Article VI relating to the scheduling of two PDDs per year and the past practice of having the last day of the teacher work year be a non-student contact day. It sought the removal of the additional professional day, a return to the initial calendar, and "make whole" relief. The grievance was denied in turn by the Superintendent and the Board. On June 23, 2017, the Association filed a demand for arbitration with the Commission (Docket No. AR-2017-612) describing the grievance as "Unilateral decision by [the Board] to add an additional [PDD] to the calendar." An arbitrator was appointed. The Board then requested, with the Association's consent, that the arbitrator hold the case in abeyance so the Board could seek a scope of negotiations determination. That request was granted and this petition ensued.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any employer defenses. *Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 154 (1978).<sup>5/</sup>

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5/ The Superintendent, referencing past school calendars, asserts that prior work years often contained more than two PDDs. If the calendars reflect what occurred on those dates in the prior years, that is a factual issue related to the merits of the grievance within the jurisdiction of the arbitrator if we find the dispute to be arbitrable.

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

lists the standards for determining mandatorily negotiability:

[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.

We balance the parties' interests based on the particular facts and arguments made. *City of Jersey City v. Jersey City Police Officers Benevolent Ass'n*, 154 N.J. 555, 574-575 (1998).

The Board argues that the grievance, if sustained, would interfere with its non-negotiable managerial prerogative to establish the calendar and accordingly, arbitration must be restrained. It also asserts that it has a prerogative to set assignments for teacher work days and that assigning professional development activities on a day that teachers are already scheduled to work is non-negotiable and non-arbitrable.<sup>6/</sup>

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<sup>6/</sup> The Board cites, inter alia, Essex Fells Bd. of Ed., P.E.R.C. No. 2018-2, 44 NJPER 71 (¶22 2017); West Morris High School Bd. of Ed., P.E.R.C. No. 2017-29, 43 NJPER 225 (¶68 2016).

The Association relies on Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) where the Supreme Court upheld an arbitration award compensating teachers for working, as mandated by the board of education, an additional two hours on the day before a holiday. The Association reasons:

There is clearly a factual dispute as to whether the Board has satisfied the requirements of Article VI . . . This issue should be determined in arbitration. PERC can clearly fashion an order, which will preclude the arbitrator from interfering with the Board's managerial prerogative. PERC can also retain jurisdiction so that a party can reapply to PERC for relief in the event the arbitrator exceeds his authority... In the alternative, PERC should order an evidentiary hearing.

The cases cited by the Board compel the conclusion that the Association cannot challenge through grievance arbitration the Board's decision to rearrange the 2017 to 2018 teacher work year. Nor can it seek restoration of the practice wherein the last teacher work day was one devoid of student contact. However, Woodstown-Pilesgrove allows the Association to present a limited factual issue to the arbitrator. In Woodstown-Pilesgrove, the change in the teacher work year was limited to an additional two hours on a single day. Here the Association is asserting that the substitution of the August 31, 2017 PDD for the June 25, 2018 last day of the work year, without students present, changed teachers' terms and conditions of employment. If it can make

that showing to the arbitrator, and defeat any defenses the Board advances, it may assert a claim for make whole relief. See Manville Bd. of Ed., P.E.R.C. No. 2017-62, 43 NJPER 432 (¶120 2017) (grievance could not undo changes in schedule, but could seek compensation for alleged workload increase).

ORDER

The request of the Franklin Lakes Board of Education for a restraint of arbitration is granted to the extent the demand for arbitration filed by the Franklin Lakes Education Association seeks to eliminate the substitution of a PDD at the start of the work year for an end of year work day when students are not present. The restraint is denied to the extent the grievance claims that the change seeks make whole relief for an alleged resulting workload increase.

BY ORDER OF THE COMMISSION

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

ISSUED: April 26, 2018

Trenton, New Jersey