

P.E.R.C. NO. 2019-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTHAMPTON TOWNSHIP  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2018-269

SOUTHAMPTON TOWNSHIP  
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Southampton Township Board of Education violated 5.4a(5) and, derivatively, 5.4a(1), by unilaterally changing the 2018-19 faculty work year so that two non-student faculty workdays no longer immediately preceded the start of the student school year, contrary to the prior practice. The Commission finds that the timing of non-student faculty work days and the overall length of the faculty work year beyond the student school year are terms and conditions of employment that intimately and directly affect the work and welfare of public employees, and that negotiations over faculty work days within the dates a school is open is neither preempted by statute nor would significantly interfere with the determination of governmental policy. However, the Commission finds that the Board did not refuse to negotiate over potential negotiable impacts of the calendar change, where the Southampton Township Education Association identified no specific impacts beyond mere speculation.

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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EDUCATION ASSOCIATION,

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Appearances:

For the Respondent, Capehart & Scatchard, P.A.,  
attorneys (Robert Muccilli, of counsel)

For the Charging Party, Oxfeld Cohen, P.C., attorneys  
(Sanford R. Oxfeld, of counsel)

DECISION

On May 21, 2018, the Southampton Township Education Association (Association) filed an unfair practice charge along with an application for interim relief against the Southampton Township Board of Education (Board). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) and (5)<sup>1/</sup>, by refusing to negotiate over the start date of the work

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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. (5) Refusing to negotiate in good faith with a majority representative of  
(continued...)"

year for staff, the number of days before the student school year that staff would be required to attend, and the impact of the student school year on staff. On June 7, 2018, a Commission Designee denied the application for interim relief, finding that the Association had not shown a substantial likelihood of prevailing in a final Commission decision and had not demonstrated that irreparable harm will occur if the requested relief is not granted. I.R. No. 2018-14, 45 NJPER 1 (¶1 2018).

On October 5, 2018, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the Association's charges. The Association submitted a brief in support of a motion for summary judgment on January 3, 2019 along with exhibits and the certification of NJEA UniServ Representative Michael Kaminski. The Board submitted a brief in support of a motion for summary judgment on January 4, along with exhibits, the supplemental certification of Superintendent Michael L. Harris, and a joint stipulation of facts. The Board submitted a reply brief on January 18. On January 22, the parties agreed to proceed with a stipulated record consisting of the stipulated facts, the supplemental certification of Mike Harris, and the certification of Michael Kaminski, to waive a Hearing Examiner's Report and

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1/ (...continued)  
employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

Recommended Decision, and to have the Commission issue a decision based on the stipulated record and the parties' legal arguments.

See N.J.A.C. 19:14-6.7.

### FACTS

Based upon the parties' stipulations, exhibits, and certifications, the record is comprised of these facts:

- The Association represents a unit of Board employees including certified teaching personnel, media specialist, nurses, L.D.T.C., psychologist, guidance counselors, social worker, and behavioral consultant.
- The Board and Association are parties to a collective negotiations agreement (CNA) effective from July 1, 2015 to June 30, 2018.
- On March 26, 2018, the Board adopted a calendar for the 2018-19 school year.
- Under the proposed 2018-19 calendar, teacher orientation occurs on Wednesday August 29<sup>th</sup>, teacher in-service occurs on Thursday August 30<sup>th</sup>, and the first student day is Tuesday September 4<sup>th</sup>. Friday August 31<sup>st</sup> is not designated as either a teacher work day or a student day, and Monday September 3<sup>rd</sup> is the Labor Day holiday. The calendar provides for four full consecutive instructional days in the first week: September 4, 5, 6, and 7.
- The calendar for the 2017-18 school year began with staff development days on September 5<sup>th</sup> (teacher orientation) and 6<sup>th</sup> (teacher in-service) followed by only two student days in the first week of school on September 7<sup>th</sup> and 8<sup>th</sup>.
- Article VII.B. of the CNA provides for a teacher work year of 188 days and for 181 student contact days. The CNA does not stipulate the date that the school year will start or end, and does not stipulate when calendar days of any type will be scheduled.

- The school calendar adopted by the Board for 2018-19 does not alter the number of teacher work days per year, teachers' annual rate of pay in regard to the number of days worked, or the number of student contact days.
- On March 27, 2018, Association President Susan McNally sent Superintendent Harris an email that stated: "The Association has concerns over the negotiability of a number of issues that will be impacted by the district's proposed move to open school to staff in August. We currently have a Negotiations meeting scheduled for April 10. We propose pausing any grievance time lines until we have had a chance to meet face to face to discuss these issues."
- The next negotiations session took place on April 10, 2018.
- Kaminski certifies that at the April 10, 2018 negotiations session, the Association raised issues related to the work calendar for staff, took the position that changes to when non-student staff work days were scheduled was negotiable, and was seeking at a minimum that Association members be made whole for any negative impacts on items such as child care, vacations, or second jobs caused by the change.
- Harris certifies that the Association did not raise the calendar at the April 10<sup>th</sup> negotiations session, but that the Board asked the Association about its concerns and the Association did not identify any specific impact from the 2018-19 calendar because it had not fully assessed it yet.
- On April 18, 2018, the Association's counsel sent the Board's counsel a letter in which the Association set forth its position regarding the Board's adoption of the 2018-19 school calendar. The letter acknowledged the Board's right to establish the student calendar (when school is open for the students), but asserted that the impacts of a change in the student calendar are negotiable, and that when the faculty/staff must attend school on non-student days is negotiable.

- The parties had a negotiations session on May 8, 2018. Harris certifies that the Association did not raise for discussion the 2018-19 calendar at the May 8 session. Kaminski and Harris both certify that the parties did not negotiate over the 2018-19 calendar after May 8.
- On May 9, 2018, the Board's counsel sent the Association's counsel a letter in response to the Association's counsel's April 18 letter. The letter stated that the Board implemented the 2018-19 calendar with teacher orientation and professional days starting before September 1 so that the students could begin their first week of school with four consecutive instructional days (following Labor Day). It asserted that the change in the start of the teacher work year to prior to September 1 was not negotiable because it did not increase the number of teacher work days.

#### ARGUMENTS

The Association asserts that the Commission and courts have previously held that the length of the staff work year is a mandatorily negotiable term and condition of employment, even though it must be conducted in light of the school year for students, which is not mandatorily negotiable. It argues that once the Board has exercised its managerial prerogative to establish when the school year begins for students, that prerogative does not fix the faculty work year. The Association contends that the Board went further than exercising its prerogative to establish when school is open for the students, "but mandated when teachers would be present, significantly, for two days at least one week before school would be open for students, in addition to the normal day before student school

opening, as a kind of orientation day.” The Association asserts that the Commission and court decisions in Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 2014-47, 40 NJPER 337 (¶123 2014), aff’d, 42 NJPER 71 (¶18 App. Div. 2015) did not consider the teacher work year, but only considered the Board’s right to change the start of the school year to prior to September 1. It argues that the recent Commission decision in Essex Fells Bd. of Ed., P.E.R.C. No. 2018-2, 44 NJPER 71 (¶22 2017) did consider both the faculty work year and a change in the school calendar, but erroneously ignored judicial precedent in Burlington Cty. Coll. Faculty Ass’n v. Bd. of Trustees, 64 N.J. 10 (1973) and N.J.I.T. and Newark Coll. of Eng’g Prof. Staff Ass’n, P.E.R.C. No. 80-54, 5 NJPER 491, 493 (¶10251 1979), aff’d, NJPER Supp.2d 263 (¶218 App. Div. 1980) that the teacher work days, in excess of the student school calendar, are mandatorily negotiable.

The Board asserts that Burlington and Bethlehem support its position that it had no obligation to negotiate over the teacher work year. It argues that Woodstown-Pilesgrave Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrave Reg. Ed. Ass’n, 81 N.J. 582 (1980) supports its position that it had no obligation to negotiate over the impact of changing the start of the student and faculty work years because the dominant issue is an educational goal. The Board contends that the instant case is similar to Essex Fells Bd. of Ed. and Essex Fells Tchrs Ass’n, P.E.R.C. No. 2018-2, 44

NJPER 71 (¶22 2017), in which the Commission dismissed an unfair practice charge over the faculty work year starting on August 31, 2015 when the student school year was changed to September 2, 2015. The Board also asserts that this case is like W. Morris Reg'l High Sch. Bd. of Educ. v. W. Morris Reg'l Educ. Ass'n, P.E.R.C. No. 2017-29, 43 NJPER 225 (¶68 2016), aff'd, 45 NJPER 89 (¶23 App. Div. 2018), which held that the Association could not negotiate to limit the faculty work year to between the dates of September 1 and June 30 because it related to the Board's non-negotiable managerial prerogative to set the school calendar.

#### STANDARD

N.J.S.A. 34:13A-5.3 defines when a public employer has a duty to negotiate before changing working conditions:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. . . . In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

Consistent with the Act, the Commission and courts have held that changes in negotiable terms and conditions of employment must be achieved through the collective negotiations process. See, e.g., Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶29016 1997), aff'd, 334 N.J. Super. 512 (App. Div. 1999), aff'd, 166 N.J. 112 (2000); Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J.

322, 338 (1989); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 52 (1978). A public employer may violate subsection 5.4a(5) of the Act if it modifies terms and conditions of employment without first negotiating in good faith to impasse or having a managerial prerogative or contractual right to make the change. State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985). For the Commission to find such a violation, the charging party must prove: (1) a change; (2) in a term or condition of employment; (3) without negotiations. Willingboro Bd. of Ed., P.E.R.C. No. 86-76, 12 NJPER 32 (¶17012 1985). The remedy for a failure to negotiate prior to instituting a mid-contract change to a non-contractual employment condition is to restore and maintain the status quo until negotiations have been held and an agreement reached. Galloway, 78 N.J. at 48-49; Middletown Tp., 34 NJPER 228, 231 (¶79 App. Div. 2008). An employer violates 5.4a(1) independently if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification and, derivatively, when an employer violates another unfair practice provision. Lakehurst Bd. of Ed. and Lakehurst Ed. Ass'n, P.E.R.C. No. 2004-74, 30 NJPER 186 (¶69 2004), aff'd, 31 NJPER 290 (¶113 App. Div. 2005).

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

[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.]

#### ANALYSIS

The establishment of a school calendar in terms of when school commences and terminates is a non-negotiable managerial prerogative. Woodstown-Pilesgrove, supra, 81 N.J. at 592; Burlington, supra, 64 N.J. at 16; Piscataway Tp. Educ. Ass'n v. Piscataway Tp. Bd. of Ed., 307 N.J. Super. 263, 270 (App. Div. 1998). The Commission and courts have also highlighted the distinction between the student calendar and faculty work days, noting that faculty work days are mandatorily negotiable to the extent negotiations do not interfere with scheduling the student school year. In Burlington, the New Jersey Supreme Court stated:

While the calendar undoubtedly fixes when the college is open with courses available to students, it does not in itself fix the days and hours of work by individual faculty members or their work loads or their compensation. These matters, the defendant readily acknowledges, are mandatorily negotiable under the Act though the negotiations are to be conducted in the light of the calendar.

[Burlington at 12; emphasis added.]

In Woodstown-Piles Grove, the New Jersey Supreme Court relied on and favorably cited Burlington in a case involving a change to the teacher work year in a school setting, holding:

Establishing the school calendar in terms of when school commences and terminates is a non-negotiable managerial decision. Cf. Burlington Cty. College Faculty Ass'n v. Burlington Cty. College Bd. of Trustees, 64 N.J. 10, 15-16 (1973), in which we quoted the following language from Biddeford v. Biddeford Teachers Ass'n, 304 A.2d 387, 421 (Me.Sup.Jud.Ct.1973) (Wernick, J., concurring and dissenting):

"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."

The Legislature has expressly recognized that calendar responsibility belongs to the board. N.J.S.A. 18A:36-2 states: The board of education shall determine annually the dates,

between which the schools of the district shall be open, in accordance with law.

[Woodstown-Pilesgrove at 592-593.]

Both Woodstown-Pilesgrove and Burlington favorably cited and quoted from a Maine Supreme Judicial Court case (Biddeford, supra) that set forth a distinction between the non-negotiable parts of the school year and the negotiable parts of the school year with the qualifying language that the school calendar is a non-negotiable educational policy "at least insofar as students and teachers are congruently involved." Accordingly, Woodstown-Pilesgrove and Burlington endorsed the negotiability of faculty work days concerning the parts of the school calendar where students and teachers are not congruently involved.

Subsequent to the Supreme Court's decision in Burlington, the Commission and courts continued to uphold the distinction between school/college calendars for students versus the faculty work year, which necessarily encompasses the student calendar but may be negotiable to the extent it exceeds it. In Greenbrook Tp. Bd. of Ed., P.E.R.C. No. 77-11, 2 NJPER 288 (1977), the Commission held that, though negotiations are "to be conducted in light of the establishment of a school calendar," "the number of working days for teachers established under the school calendar is a mandatory subject of negotiations." In Edison Tp. Bd. of Ed., P.E.R.C. No. 78-53, 4 NJPER 151 (¶4070 1978), the Commission found:

Thus, it is clear that the Commission has recognized the coexistence of two concepts: 1) the establishment of the academic or school calendar which is not mandatorily negotiable and 2) the determination of employees' work year which is a term and condition of employment and is mandatorily negotiable. However, it has been recognized that negotiations on the work year for teachers will, as a practical matter, recognize the parameters of the school calendar. Thus, the areas of mandatory negotiability of teacher work year must be limited to those days, both as to numbers and scheduling, in excess of the days of attendance of students scheduled by the Board to meet their required educational responsibilities.

[Edison, 4 NJPER at 152.]

See also, Belvidere Bd. of Ed. and Belvidere Ed. Ass'n, P.E.R.C. No. 78-62, 4 NJPER 165 (¶4080 1978), aff'd, NJPER Supp.2d 57 (¶37 App. Div. 1979) (negotiations over teacher work year are required but are limited by the school calendar, i.e., to those days in excess of when student attendance is scheduled).

In NJIT, supra, the Commission held that the Institute violated 5.4(a)(1) and (a)(5) of the Act by refusing to negotiate over a change to the faculty work year requiring them to be there seven days prior to the start of classes. Identifying Woodstown-Pilesgrove and Burlington as the controlling judicial precedent, and citing Edison, supra, the Commission found:

This Commission has always maintained a distinction between the teachers' work year or work day and the student year or day. . . . In the instant case the teachers were ordered to be available for conferences and

meetings seven days before the students' classes began. Therefore, beginning classes on August 30<sup>th</sup> meant that teachers had to cut short their summer vacations, jobs, etc. and report to work by August 23, 1978. This was earlier than any prior year. Even if the student calendar was non-negotiable, which it was, the change in that portion of the calendar which only affected teachers was mandatorily negotiable. The teachers could have demanded that the seven day preparation period be reduced to require that they report no earlier than in past years as long as they were there when the students' calendar began.

[NJIT, 5 NJPER at 493; emphasis added.]

The Appellate Division affirmed, holding that, "although the instructional calendar was non-negotiable, proposals to reduce the number of 'availability' days and to restore the August 25 starting date of the 'availability' period or, alternatively, for extra compensation were within the scope of negotiability."

NJIT, NJPER Supp.2d at 264.

More recently, in Piscataway, supra, 307 N.J. Super. 263 (App. Div. 1998), the Appellate Division, relying on Burlington, held that the Board did not have to negotiate with the Association before deciding, due to inclement weather cancellations, to open schools (for students and teachers) on days previously scheduled as recess days. The court also held, based on Woodstown-Pilesgrrove, that the impacts of those re-scheduled student days on the teachers could be mandatorily negotiable unless negotiations would significantly interfere with the related management prerogative. Notably, the Piscataway

court cited Edison for the proposition that the non-student faculty work year is negotiable:

Given that boards must offer at least 180 days of instruction each year, the Commission has limited negotiations over teacher work year to those days exceeding that minimum. Edison Tp. Bd. of Ed., P.E.R.C. No. 78-53, 4 NJPER 151 (¶4070 1978).

[Piscataway, 307 N.J. Super. at 270.]

It is apparent from these judicial and Commission precedents that the dates the schools are open, the faculty work year, and the student school year, are not mutually exclusive calendars. The dates the schools are open set the parameters for the school calendars.<sup>2/</sup> Within those general dates are both the faculty work year and student school year. A school board has the managerial prerogative to set the dates the schools are open and the dates for the student school year. Obviously, there is substantial, nearly complete overlap between the student school year and the faculty work year, which has been acknowledged by the Commission and courts. But the Commission and courts have identified those non-teaching/non-student aspects of the faculty work year that are mandatorily negotiable. Therefore, once the overall school calendar and the student days are established, negotiations over the timing and placement of non-student faculty

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<sup>2/</sup> N.J.S.A. 18A:36-2 provides: "The board of education shall determine annually the dates, between which the schools of the district shall be open, in accordance with law." Woodstown-Pilesgrove at 593.

work days within that school calendar are mandatorily negotiable unless a board can demonstrate that it would significantly interfere with educational policy goals.

Here, 181 of the 188 faculty work days are student contact days. This leaves seven faculty work days when students are not present for instruction. The status quo in the district was for the two non-student faculty work days immediately preceding the start of the student school year to be scheduled as a "Teacher Orientation" day followed by a "Teacher In-service" day, both of which are categorized as "Staff Development" days on the calendars.<sup>3/</sup> The 2017-18 calendar scheduled these two Staff Development days on the Tuesday and Wednesday following Labor Day, immediately followed by the "First Student Day" on Thursday and another student day on Friday.

For the 2018-19 calendar, the Board changed the practice of scheduling these two non-student faculty work days on the two days immediately preceding the start of the school year. The 2018-19 calendar scheduled Staff Development days on Wednesday, August 29 and Thursday, August 30, followed by a Friday, August 31 with neither development nor students/teaching scheduled. Then, following the three-day Labor Day weekend, the student school year began on Tuesday, September 4.

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<sup>3/</sup> The record contains the school calendar of only one previous year, 2017-18, which was the status quo at the time the Board announced the 2018-19 calendar.

The shift of the faculty work year to prior to Labor Day and into August, by itself, is the type of calendar shift that has been found non-negotiable when done due to a change in the student school year for educational policy reasons. See Bethlehem, supra, 40 NJPER 337 (¶123 2014), aff'd, 42 NJPER 71 (¶18 App. Div. 2015) (change in student school year to begin in August to match calendar of regional high school, with faculty start day continuing to be one day prior, was not negotiable); and Essex Fells Bd. of Ed., P.E.R.C. No. 2018-2, 44 NJPER 71 (¶22 2017) (change in faculty start date to August to accommodate shift in student start date prior to Labor Day to align with regional district was not negotiable).

If the Board had simply shifted the start of the 2018-19 faculty work year commensurate with the shift in the student school year, such that the students' first day of school would be immediately preceded by the two Staff Development days (or here, due to the interceding Labor Day weekend caused by the shifted calendars, occur on the two "business days" prior to the student school year), then, consistent with Bethlehem and Essex Fells, we would likely find the changed faculty calendar, made in light of the changed student calendar, to be non-negotiable with potential negotiable impacts. That would have been consistent with the status quo. However, more than simply shifting both the student start date and concomitant Staff Development days earlier, the

Board added a day to the overall faculty availability calendar by scheduling the Staff Development days on the second and third business days prior to the student start date. Thus, instead of the teachers continuing their summer breaks up until two days prior to the start of the student school year, as was the previous practice, they were required to report a day earlier for non-student faculty work days.

Nothing in the record indicates why the Board made these non-student faculty work days earlier, in relation to the student start date, than in previous years. It may well be that the Board believed it was providing a benefit to the staff by effectively giving them a four-day Labor Day weekend from August 31 - September 3 after requiring them to start the work year in August. But the Board was required by our Act to negotiate that faculty work year change before implementation. The stipulated record is clear that the Association sought to negotiate over the change to the faculty non-teaching work year, and the Board responded that it was not negotiable. The Board has not articulated an educational policy reason for adding an extra day to the faculty work year that - while not a duty day - further truncated the faculty's summer breaks and required their availability earlier than their usual two business days

immediately preceding the start of the student school year.<sup>4/</sup>

Applying the Local 195 balancing test, we conclude that the employees' interests in negotiating over the timing of non-student faculty work days and overall length of the faculty work year beyond the student school year is a term and condition of employment that intimately and directly affects the work and welfare of public employees, that negotiations over faculty work days within the dates a school is open are not preempted by statute, and negotiations would not significantly interfere with the determination of governmental policy regarding the student school year. Accordingly, we hold that the Board violated 5.4a(5) and, derivatively, 5.4a(1), by unilaterally changing the 2018-19 faculty work year beyond what was necessary to coincide with the start of and preparation for the student school year, and refusing to negotiate over the change.

The recent school calendar cases cited by the Board are distinguishable. As discussed above, Bethlehem and Essex Fells involved changes to student calendars to match with regional schools, but the associated changes in the faculty work year were not negotiable because they did not alter the number of days

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<sup>4/</sup> We need not reach the question of whether requiring two non-student faculty work days prior to the start of the school year (as opposed to one or zero) was mandatorily negotiable in the first place (see NJIT); under these circumstances we consider only the negotiability of the change (relative to the start of the student school year) from where these two days had previously been scheduled.

prior to the student school year that the faculty would be required to attend orientation and/or professional development days. West Morris was a scope of negotiations case in which the Commission held the Association's contract proposal to set the faculty work year between September 1 and June 30 was non-negotiable. The Board places much significance on the following quote from the unpublished West Morris Appellate Division case:

The Association's distinction between the two calendars undercuts the managerial prerogative that it acknowledges. If the teachers' calendar were negotiable as the Association suggests, the student calendar would be controlled by it because that calendar could only be set within the boundaries negotiated for the teachers' calendar.

[45 NJPER at 91; emphasis added.]

West Morris is distinguishable from the instant case because it did not specifically address only non-student faculty work days, but involved the Association's attempt to dictate the entirety of the calendar dates within which faculty could work, which necessarily would have precluded the Board's ability to schedule any portion of the student school year beyond those dates. The West Morris court's application of the law to the facts is entirely consistent with the applicable judicial precedent of Woodstown-Pilesgrove, Burlington, and Piscataway (all of which were cited by the court) that recognizes a distinct faculty work year but acknowledges that negotiations over it "are conducted in

light of the school calendar” and that “the Commission has limited negotiations over teacher work year to those days exceeding that minimum [180 days of instruction].” Thus, the result in West Morris was not really a departure from precedent but was, as applied to those particular factual circumstances, a proper application of the already “baked in” caveat to faculty work year negotiability that it cannot undermine a Board’s ability to set student school days as educationally necessary.

We next turn to the Association’s negotiable impacts claim. Regarding negotiable impacts, the Supreme Court has held:

The nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives . . . It is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions.

[Woodstown-Pilesgrove, 81 N.J. at 593.]

See also Piscataway, 307 N.J. Super. at 275. (“Terms and conditions of employment arising as impact issues are thus mandatorily negotiable unless negotiations would significantly interfere with the related prerogative.”)

We find that moving the faculty work year into August and prior to Labor Day, as well as changing the start of the faculty work year to three business days prior to the start of the student school year, could have potentially given rise to

negotiable impacts. Nevertheless, the stipulated record does not contain evidence that the Association ever specifically identified impacts on teachers' terms and conditions of employment caused by the additional day. The Kaminski certification notes that the Association was seeking for its members to be made whole if there was a negative impact, but alleges only speculative effects on items such as "child care, vacations, second jobs, etc." The Kaminski and Harris certifications stated that the Association had not or could not yet assess the impact at the time of the April 10, 2018 negotiations session, and there is nothing in the record showing that the Association ever identified any specific impacts at a later negotiations session. Thus, we find that the Board did not commit an unfair practice by not engaging in impact negotiations regarding the change in the faculty work year. See Bethlehem (Association did not identify specific impacts caused by calendar change); West Morris (any potential impact to Association members from calendar change are speculative); Essex Fells (record is devoid of evidence that change in school year start date resulted in adverse impact on Association members); Compare Piscataway (on remand the Commission held "that the employees' interests in negotiating over the personal and unpaid leave issues identified in the demand to negotiate outweighed the employer's interests" and would not significantly encroach on the Board's school

calendar change. See P.E.R.C. No. 99-39, 24 NJPER 520 (¶29242 1998)).

ORDER

The Southampton Township Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate in good faith with the Southampton Township Education Association concerning changes in terms and conditions of employment relating to the alteration of the faculty work year for the 2018-19 school year.

2. Refusing to negotiate in good faith with the Association concerning terms and conditions of employment of employees in the unit, particularly by unilaterally changing the timing of non-student faculty work days in relation to the start of the student school year.

B. Take this action:

1. Negotiate in good faith with the Association concerning any proposed changes to the non-student faculty work year.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately

and maintained by it for at least sixty (60) days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Boudreau, Jones and Papero voted in favor of this decision. None opposed. Commissioner Voos abstained from consideration.

ISSUED: April 25, 2019

Trenton, New Jersey



**NOTICE TO EMPLOYEES**  
**PURSUANT TO**  
**AN ORDER OF THE**  
**PUBLIC EMPLOYMENT RELATIONS COMMISSION**  
**AND IN ORDER TO EFFECTUATE THE POLICIES OF THE**  
**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,**  
**AS AMENDED,**

**We hereby notify our employees that:**

**WE WILL** cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to negotiate in good faith with the Southampton Township Education Association concerning changes in terms and conditions of employment relating to the alteration of the faculty work year for the 2018-19 school year.

**WE WILL** cease and desist from refusing to negotiate in good faith with the Association concerning terms and conditions of employment of employees in the unit, particularly by unilaterally changing the timing of non-student faculty work days in relation to the start of the student school year.

**WE WILL** negotiate in good faith with the Association concerning any proposed changes to the non-student faculty work year.

Docket No. CO-2018-269

SOUTHAMPTON TOWNSHIP BOARD OF EDUCATION  
(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830