

P.E.R.C. NO. 81-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PENNSVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-81-150-80

PENNSVILLE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice decision, the Commission determines that the Pennsville Board of Education, in violation of the New Jersey Employer-Employee Relations Act, unilaterally altered a term and condition of employment by terminating a past practice whereby children of employees represented by the Pennsville Education Association and living outside the district were permitted the Pennsville public schools without charge for tuition. This action was determined by the Commission to be in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5).

By way of remedy, the Commission ordered the Pennsville Board of Education to cease and desist from its unfair practices and affirmatively to reimburse all employees represented by the Pennsville Education Association who paid tuition for their children to attend Pennsville schools in 1980-1981, to reinstate the tuition policy in effect prior to September 1, 1980 and to post the customary notice to employees.

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Appearances:

For the Respondent, John D. Jordan, Esquire

For the Charging Party, Selikoff & Cohen, P.A.
(Steven R. Cohen, of Counsel and On the Brief)

DECISION AND ORDER

On November 7, 1980, the Pennsville Education Association (the "Association") filed an unfair practice charge with the Public Employment Relations Commission (the "Commission") alleging that the Pennsville Board of Education (the "Board") unilaterally altered a term and condition of employment in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (a) (1) and (5).^{1/} Specifically, the Association alleges that the Board unilaterally terminated a past practice whereby children of employees represented by the Association and living outside the school district were allowed to attend school within the district

1/ These subsections 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 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."

without charge for tuition.

It appearing that the allegations of the charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint was issued by the Commission's Director of Unfair Practices on December 24, 1980. The matter was not assigned to a Hearing Examiner; instead, a staff agent was designated to secure stipulations of fact from the parties. On January 27, 1981, the parties entered into such stipulations of fact, submitted documentary evidence, and agreed to waive a Hearing Examiner's report and submit the case directly to the Commission for decision pursuant to N.J.A.C. 19:14-6.7. The stipulations are attached hereto and made a part hereof. Briefs were filed by both parties, the last of which was received on March 2, 1981.

The stipulated record indicates that from September 1, 1964 to September 1, 1980, the Board had a policy of allowing children of employees represented by the Association and living outside the school district to attend school within the school district tuition free. On September 1, 1980, the Board, without first negotiating with the Association, adopted a new policy stating that children of regular employees, living outside the school district will not be permitted to attend the Pennsville Public Schools tuition free, but that any children of employees not living in the district who were enrolled as full-time students during the 1979-80 school year will be permitted to complete their public school education in the Pennsville District on a tuition-free basis. The instant unfair practice charge was timely filed thereafter by the Association.

The disposition of this case turns on whether or not the Board was obligated to negotiate the aforementioned policy change with the Association. The scope of negotiable terms and conditions of employment has been clearly established by the New Jersey Supreme Court.

"[N]egotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy."
State v. State Supervisory Employees Association,
78 N.J. 54, 67

Moreover, specific statutes or regulations which expressly set particular terms and conditions of employment...for public employees may not be contravened by negotiated agreement.

The Board does not dispute that the tuition policy is a matter which intimately and directly affects the work and welfare of employees. We determine that the policy does so affect employees. Like health care and insurance benefits, a tuition waiver for children of employees residing outside of the district is a form of compensation and is thus clearly negotiable. Burlington Ct. Col. Fac. Assoc. v. Bd. of Trustees, 64 N.J. 10 (1973). While the tuition policy may not be a typical form of compensation nor one which all employees may enjoy, these factors do not effect the negotiability of the policy (cf. Westbury Water and Fire District and Nassau Chapter, Civil Service Employees Association, 13 PERB 3019 (1980)).

The Board contends that the charge should be dismissed. Even if the tuition policy intimately and directly affects the work and welfare of employees, the Board argues, the policy falls within the inherent management prerogatives upon which management

cannot negotiate. State Supervisory, supra. The Board contends that its responsibility to generate sufficient income to provide a thorough and efficient education precludes negotiations on the tuition policy.

We disagree. All compensation decisions affect a public employer's budget and the services it can provide. However, public employers cannot unilaterally establish and/or change compensation levels where public employees are represented by a recognized or certified employee representative. Burlington Cty, supra; Bd. of Ed. of City of Englewood v. Englewood Teachers Assoc, 64 N.J. 1, 8 (1973); Jamesburg Bd. of Bd. and Jamesburg Ed. Assoc, P.E.R.C. No. 81-75, 7 NJPER 26 (¶12011 1980). Therefore, we find this contention to be without merit.

Finally, we address the Board's position that a specific State statute preempts negotiation on tuition policy. N.J.S.A. 18A:38-3 provides:

Any person not resident in a school district, if eligible except for residence, may be admitted to the schools of the district with the consent of the board of education upon such terms, and with or without payment of tuition, as the board may prescribe.

The statute clearly does not require school boards to require tuition for non-residents, nor does it prevent them from changing tuition. Instead, a range of board conduct is allowed by the statute. Surely this is not the kind of preemptive statute envisioned in State Supervisory, supra, at page 80:

Negotiation over matters so set by statutes or regulations is not permissible. We use the word "set" to refer to statutory or regulatory provisions which speak in the

imperative and leave nothing to the discretion of the public employer.

Since the tuition policy of the Board, is a term and condition of employment which is neither outweighed by inherent managerial prerogatives nor preempted by statute, we conclude that the Board's unilateral alteration of that policy constitutes a direct violation of N.J.S.A. 34:13A-5.4(a)(5), as well as a derivative violation of N.J.S.A. 34:13A-5.4(a)(1).^{2/}

ORDER

For the reasons set forth above, the Commission ORDERS:

A. That the Pennsville Board of Education cease and desist from:

1. failing to negotiate in good faith with the Pennsville Education Association by unilaterally altering the past practice of allowing the children of non-resident employees represented by the Association to attend Pennsville schools tuition free; free;

2. interfering with, restraining or coercing employees represented by the Pennsville Education Association in the exercise of rights guaranteed to them by the Act.

B. That the Board take the following affirmative action:

1. Reimburse all employees represented by the Pennsville Education Association who paid tuition for their children to attend Pennsville schools in 1980-81.

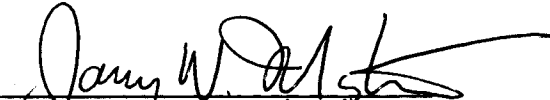
2. Reinstate the tuition policy in effect prior to September 1, 1980.

^{2/} The Association's requests for interest and costs of litigation are denied.

3. Post in its central building in Pennsville, New Jersey, copies of the attached notice marked "Appendix A." Copies of said notice, on forms provided by the Commission, shall, after being signed by the Pennsville Board of Education's representative, be posted by the Board immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter in conspicuous places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Board to ensure that such notices are not altered, defaced or covered by any other material.

4. Notify the Chairman of the Commission in writing within twenty (20) days from the receipt of this decision as to what steps have been taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Parcels and Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
April 16, 1981
ISSUED: April 20, 1981

NOTICE TO ALL 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 negotiate in good faith with the Pennsville Education Association by unilaterally altering the past practice of allowing the children of non-resident Association members to attend Pennsville schools tuition free.

WE WILL NOT interfere with, restrain or coerce employees represented by the Pennsville Education Association in the exercise of rights guaranteed to them by the Act.

WE WILL reimburse all employees represented by the Pennsville Education Association who paid tuition for their children to attend Pennsville schools in 1980-81.

WE WILL reinstate the tuition policy in effect prior to September 1, 1980.

PENNSVILLE BOARD OF EDUCATION

(Public Employer)

Dated _____

By _____

(Title)

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, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

Pennsville Board of Education

- and -

Pennsville Education Association

Docket No. CO-81-150-80

STIPULATIONS

The Pennsville Board of Education ("Board") and the Pennsville Education Association ("Association") enter the following stipulations:

1. The Board is a public employer within the meaning of the New Jersey Employer-Employee Relations Act.
2. The Association is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act.
3. The Association is the exclusive representative of the professional staff, with the exception of administrators, of the Board. The Association has represented this unit since approximately the passage of the New Jersey Employer-Employee Relations Act.
4. The Board and the Association have entered a collective agreement which covers the period July 1, 1980 - June 30, 1982. A copy of this Agreement is attached as Exhibit A.
5. Prior to September 1958, a policy existed whereby children of non-resident employees could attend Pennsville schools tuition free. On November 18, 1958, the Board repealed this policy and adopted a policy that children of employees living outside the school district would not be permitted to attend lower Penns Neck Township school tuition free except such children already attending such schools. A copy of Board minutes attesting this policy is attached as Exhibit B.
6. Effective September 1, 1964, the Board adopted a policy whereby children of employees represented by the Association and living outside the school district could attend school within the school district tuition free. A copy of Board minutes attesting this policy is attached as Exhibit C.

7. On May 18, 1971, the Board unilaterally made a new procedural amendment to its policy on children of employees. The Board deleted the words "Effective September 1, 1964." The Association did not formally object. A copy of Board minutes attesting this change is attached as Exhibit D.

8. Effective September 1, 1980, the Board, without first negotiating with the Association, adopted a new policy stating that children of regular employees, living outside the School District will not be permitted to attend the Pennsville Public Schools tuition free, but that any children of employees not living in the District who were enrolled as full-time students during the 1979-80 school year will be permitted to complete their public school education in the Pennsville District. A copy of this policy effective September 1, 1980 is attached as Exhibit E.

9. The issue in this case is whether the Board had an obligation to negotiate with the Association prior to changing its policy on children of employees which had been in effect from September 1, 1964 to September 1, 1980.

10. The parties agree to waive the Hearing Examiner's report and to submit this case directly to the Public Employment Relations Commission for decision on the basis of the above stipulated facts. The parties will file briefs on or before February 27, 1981. The parties at this time do not desire oral argument, but reserve the right to request oral argument provided they make the request on or before February 27, 1981.

/S/

Steven R. Cohen
Pennsville Education Association

/S/

John D. Jordan
Pennsville Board of Education

/S/

Robert E. Anderson, Jr.
New Jersey Public Employment Relations Commission

November 18, 1958

unic Conference on Nov. 21, 1958. Voice vote carried unanimously.

Upon motion by Mr. Curriden seconded by Mr. Talley, Mrs. Alice Riley was appointed Hockey Coach for the year 1958, 1959 \$275.00 per year. Roll call vote carried unanimously.

Synopsis of the 1957-58 audit report and recommendation the auditor, Harmon C. Huver, was presented by Mr. Yundt and ordered spread on the minutes by motion of Mr. Talley seconded Mr. Curriden. Roll call vote carried unanimously. See copy attached.

Upon motion by Mr. Yundt seconded by Mr. Curriden the 57-58 audit by Mr. Huver was accepted. Roll call vote carried unanimously.

Upon motion by Mr. Rogers seconded by Mr. Curriden that desks be installed in the new garage addition for the storing of lumber. Voice vote carried unanimously.

Upon motion by Mr. Tash seconded by Mr. Curriden that following Tuition Policy be adopted. Second reading.

The rate of tuition for a pupil, whether in grade school or high school, whose parent or guardian does not reside in Lower Penns Neck Township shall be the total cost per pupil for previous year based on average daily enrollment. Roll call vote carried unanimously.

Upon motion by Mr. Tash seconded by Mr. Curriden that policy covering Automobile Liability Ins. be amended to read; Automobile Liability Ins. Policy of School Nurses will be phases and paid for by the Board of Education with coverages of \$1,000.00 - 300,000.00 Liability and \$10,000.00 Property Damage. Second reading. Roll call vote carried unanimously.

Upon motion by Mr. Tash seconded by Mr. Yundt that the policy covering Insurance be amended to read: Second reading. Insurance - Central Park, Deepwater, Pennsville, and Pennsville Memorial High School and contents to be covered by blanket insurance. The value of the four schools, contents and garage are insured at \$3,800,000.00. Roll call vote carried unanimously.

Upon motion by Mr. Tash seconded by Mr. Curriden at the meeting: Effective Sept. 1, 1958, Children of Employees living outside the school district will not be permitted to attend Lower Penns Neck Township schools tuition free except such children now attending. Roll call vote carried unanimously.

Upon motion by Mr. Tash seconded by Mr. Curriden that policy regarding employees for Administrative Positions be amended to read: Second reading: New employees for administrative positions of Superintendent, Assistant Superintendent, Principal and Assistant Principal must at least have a Masters Degree. Such employees are expected to live in Lower Penns Neck Township and part in local affairs. Roll call vote carried unanimously.

Mr. Waddington moved that Guidance Counselors Wehner and Mortimer be paid the second half of the month of August at their regular salary to carry the final placement and scheduling of students. Mr. Dyer seconded the motion which was unanimously approved by roll call vote.

At 9:34 p.m. President Raleigh declared an executive session which ended at 10:23 p.m.

Mr. Dyer moved that policy ADM-7 be altered to read as follows:

Children of Employees

Effective September 1, 1964, children of regular employees living outside the school district will be permitted to attend Lower Penns Neck schools, tuition free."

Caven seconded the motion and on roll call vote, voting for: Messrs. Bailey, Curriden, Dyer, Humphreys, Littel and Raleigh - total 7. Voting against: Waddington - total 1. Motion carried.

Mr. Waddington moved that the Solicitor be authorized to negotiate with Jane Eller for the purchase of 0.84 acres of land adjacent the Pennville Elementary School grounds for an option of one year, not to exceed \$100. at a cash price of \$1,500, and to appear on the regular February ballot. Mr. Curriden seconded the motion which was unanimously approved by roll call vote.

Mr. Waddington moved that the Solicitor be authorized to negotiate with Fred Steward, Hook Road, RD Salem for an option not to exceed \$100, and one year for fifteen acres of land at a price not to exceed \$1500. per acre and to appear on the February ballot. Mr. Caven seconded the motion and on roll call vote, voting for: Messrs. Bailey, Caven, Dyer, Waddington and Raleigh - total 5. Voting against: Mr. Humphreys, Mr. Littel - total 2. Voting against: Mr. Curriden - total 1. Motion carried.

Mr. Waddington suggested that the Superintendent advise Miss Helen Macey that the Board might be interested in five acres of land adjoining the school site at Valley Park and to obtain a price to submit to the Board at the next meeting. No objection was raised.

Mr. Waddington moved that the request of Miss Honora A. Oberholtzer June 24, 1964 to attend Pennville Memorial High School be denied. Mr. Dyer seconded the motion which was unanimously approved by roll call vote.

President Raleigh adjourned the meeting at 10:46 p.m.

Respectfully submitted,

C. A. Tash
C. A. Tash
Secretary

LOWER PENNS NECK TOWNSHIP
Board of Education
Pennsville, New Jersey

SALE OF USED FURNITURE
The Board of Education of Lower Penns Neck Township offers for sale to the highest bidder, the following used furniture and equipment which may be seen at the following schools by contacting the principal of each school: Pennville Memorial High School, Mr. Nelson Beebe, Jr., Principal - One Room combination freezer and wiring cabinet, catalog No. 12852A, School No. 1; Pennville Elementary School, Mr. H. S. Shindler, Principal - 30 used wooden folding chairs, 15 chairs of 2's, and 4 to 6 star 3 half-round folding wash basins. This furniture and equipment is offered for sale at 50% of its original cost. The successful bidder must remove these items by August 15, 1964. A year sealed quotation should be in the hands of the Board Secretary, Pennville Memorial High School, by 10:00 a.m. Monday, August 3, 1964. By order of:
Board of Education
Lower Penns Neck Township
Pennville, New Jersey
1964

Tash
2/64

School, and requested permission to contact Mrs. Chero to get a price on the property. Mrs. Dwyer moved permission be granted. Mrs. Curriden seconded the motion which was unanimously approved on voice vote.

Mr. Talley reported that the Board of Education and the Pennsville Education Association had come to an agreement and that the report of the Fact Finder was available in the business office for anyone interested.

Mr. Walton moved that the board purchase health supplies for 1971-1972 from the list of sum of low bids as specified for a total expenditure of \$1,971.59. Mrs. Dwyer seconded the motion which was unanimously approved on roll call vote. (Attachment "D")

Mrs. Dwyer moved that policy ADM-2 "Administrators" be combined, on first reading, with policy ADM-14 "Employees for Administrative Positions." Mrs. Curriden seconded the motion and on roll call vote voting for were Mrs. Curriden, Mr. Donelson, Mrs. Dwyer, Mr. Harris, Mr. Ricketts and Mr. Talley. Total 6. Voting against were Mr. Hughes and Mr. Sparks. Total 2. Mr. Walton passed. Motion carried.

Mrs. Dwyer moved that policy ADM-4 "Assistant Principal Succeeding to Position of Principal" be deleted on first reading. Mrs. Curriden seconded the motion and on roll call vote voting for were Mrs. Curriden, Mr. Donelson, Mrs. Dwyer, Mr. Harris, and Mr. Talley. Total 5. Mr. Hughes, Mr. Ricketts, Mr. Sparks, and Mr. Walton passed. Motion carried.

Mrs. Dwyer moved that policy ADM-5 "Childred of Employees" the words "Effective September 1, 1964," be deleted on first reading. Mr. Harris seconded the motion and on roll call vote voting for were Mrs. Curriden, Mr. Donelson, Mrs. Dwyer, Mr. Harris, Mr. Sparks, Mr. Walton, and Mr. Talley. Total 7. Mr. Hughes passed. Mr. Ricketts abstained. Motion carried.

Mrs. Dwyer moved that policy ADM-6 "Clerical Workers" be rewritten as follows on first reading:

Non-Professional Employees

1. Non-professional employees will be assigned specified positions by the school business administrator.
2. Non-professional employees will be under the direct supervision of the administrator, school business administrator, or director of food services to which the employee is assigned.
3. In case of absence of any clerical employee, the employee at her earliest convenience will notify the secretary to the superintendent of schools so a suitable substitute may be secured.

Mrs. Curriden seconded the motion and on roll call vote voting for were Mrs. Curriden, Mr. Donelson, Mrs. Dwyer, Mr. Harris, Mr. Hughes, Mr. Sparks, and Mr. Talley. Total 7. Mr. Walton passed. Mr. Ricketts abstained. Motion carried.

Mrs. Dwyer moved that policy ADM-12 "Duties of the School Business Administrator" be combined with policies ADM-24 "Job Description for School

CHILDREN OF EMPLOYEES

Effective September 1, 1980, children of regular employees living outside the School District will not be permitted to attend the Pennsville Public Schools tuition free.

Any children of employees not living in the District but who were enrolled as full-time students during the 1979-80 school year will be permitted to complete their public school education in the Pennsville District.

Supersedes policies of 11-18-58, 7-21-64, 6-1-71
Adopted 7-1-80

ADM-4

EXHIBIT E