

P.E.R.C. NO. 92-118

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-92-8

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that certain successor contract proposals of the Paterson Education Association in negotiations with the Paterson School District are not mandatorily negotiable. The provisions concern lesson plans, staffing, classroom discipline and control, teaching controversial questions, and the selection of textbooks.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-92-8

PATERSON EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Rand, Algeier, Tosti & Woodruff, P.C.,
attorneys (Robert M. Tosti, Special Counsel);
Gerald L. Dorf, P.C., attorneys (Gerald L. Dorf and John C.
Scannell, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION AND ORDER

On August 8, 1991, the Paterson School District petitioned
for a scope of negotiations determination.^{1/} The District seeks a
declaration that certain successor contract proposals of the
Paterson Education Association are not mandatorily negotiable.

The parties have filed their predecessor contract and
briefs. These facts appear.

The Association represents the District's teachers and
other personnel. The District and the Association entered into a

^{1/} While the petition and petitioner's brief were actually filed
in the name of the City of Paterson Board of Education, the
District replaced the Board when the Board was abolished on
August 7, 1991. The District then retained new Labor Counsel
to represent it in this proceeding.

collective negotiations agreement effective from July 1, 1988 through June 30, 1991. The contract contained six provisions which the Association seeks to include in a successor agreement, but the District maintains are not mandatorily negotiable.^{2/}

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

It 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. [Id. at 404-405]

The first provision concerns lesson plans. It states:

7:2-3.3 Plan Book Committee

7:2-3.3-1 The parties agree that during the 1988-89 school year a Plan Book Committee shall be established. Said Committee shall consist of four (4) members appointed by the Superintendent of Schools and four (4) by the Association.

7:2-3.3-2 The Plan Book Committee shall review the plan book procedures and practices currently in effect in the

^{2/} The petition originally challenged 17 provisions, but only six remain in dispute.

district. Recommendations for changes in these practices and procedures shall be submitted to the parties for consideration, and implemented upon the mutual agreement of the parties.

7:2-3.3-3 Procedures for plan books as established in the 1985-88 contract, and reprinted below, shall remain in effect until such time as mutually agreed to revisions are implemented.

7:2-3.3-4 Plan Books - Tenure Teachers

7:2-3.4-1 Tenure teachers shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form.

7:2-3.4-2 Tenure teachers shall be required to have written lesson plans in a form they consider most practical and useful for their own needs, but shall be prepared in professional taste.

7:2-3.5 Plan Books - Non-Tenure Teachers

Non-tenure teachers shall be required to submit weekly, and/or alternate plans as needed, according to the procedures developed by the Principal and the Liaison Committee in each building.

7:2-3.6 Substitute Plans

Teachers shall provide substitutes with lesson plans in any one of the following forms - daily, weekly or alternate plans. These plans may be the individual teacher's plan book or a copy thereof.

The development, substance, and format of teacher lesson plans and the method of their preparation and submission are not mandatorily negotiable. Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984); Edison Tp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983); Fairview Bd. of Ed., P.E.R.C. No. 81-19, 6 NJPER 395 (¶11204 1980); Northern Burlington Reg. Bd. of Ed., P.E.R.C. No. 80-151, 6 NJPER 315 (¶11154 1980). In particular, a decision to use standardized plans is not mandatorily negotiable.

West Amwell Tp. Bd. of Ed., P.E.R.C. No. 78-31, 4 NJPER 23 (¶4012 1977). We have also restrained arbitration over a grievance claiming that a directive violated a clause establishing a committee which would study lesson plans and make recommendations to be implemented upon the parties' agreement. Woodbridge Tp. Bd. of Ed., P.E.R.C. No. 81-120, 7 NJPER 238 (¶12106 1981). Applying these precedents, we hold that these provisions are not mandatorily negotiable.^{3/}

The next provision concerns staffing. It provides:

9:1 Reading Specialists

9:1-1 The District agrees to provide a reading teacher for each school.

9:1-2 The District agrees that no one working as a reading specialist or being paid on Salary Schedule C during the 1978-79 school year shall be reduced in compensation or exceded during the life of this agreement.

Section 9:1-1 is a minimum staffing provision and is not mandatorily negotiable. Jersey City Bd. of Ed., P.E.R.C. No. 87-14, 12 NJPER 686 (¶17260 1986); South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984). Section 9:1-2 is not mandatorily negotiable to the extent it would prevent the District

3/ Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987), is distinguishable. That case held mandatorily negotiable a proposal requiring consultation with teachers over textbooks and instructional equipment. That proposal, however, did not interfere with the District's right to make such determinations unilaterally. This proposal, by contrast, rules out any change in lesson plan arrangements without the parties' mutual agreement.

from reducing its work force. Old Bridge Tp. Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979).

The next provision states:

27.7 A school nurse shall be scheduled to be in each building. The District guarantees that no nurse employed as of June 10, 1979 shall be exceeded during the life of this contract.

For the reasons stated in the discussion of the last provision, this provision is not mandatorily negotiable.

The next provision concerns classroom discipline and control. It provides:

28:1 Disciplinary Code

When in the judgment of a teacher a student is by his/her behavior severely disruptive to the instructional program to the detriment of the other students, the teacher should pursue the following procedures:

28:1-1 Class Cuts in the High School and Elementary Schools

28:1-1.1 Maintain for both high schools the cut-checking systems as it presently exists at John F. Kennedy High School. In elementary schools teachers of traveling classes will check with homeroom attendance to determine cuts.

28:1-1.2 Some method of informing parents of cuts on a regular basis should be devised. It was tentatively agreed that this information be included on the supplementary reports. These should be mailed to the parents for the high schools. In the elementary schools they will be mailed only if receipt by the parents is questionable.

28:1-1.3 Cutting Procedure

28:1-1.3-1 First offense - teacher shall assign detention for the purpose of making up time and work. No credit shall be given for makeup work. Parents will be notified by mail on postcard form.

28:1-1.3-2 Second offense - teacher shall send form letter to parent indicating that cutting is an infringement of the rules and student will be suspended the next time. The immediate supervisor, guidance and parents should be notified and consulted in regard to this action. Detention again should be assigned.

28:1-1.3-3 Third offense - student will be referred to the Administrator who shall call in parents to discuss problem, student will be suspended. At this time student should have all extracurricular privileges removed including athletic activity.

If a student does not appear for detention his/her behavior is now considered "defiance of authority." S/he shall be referred to the office immediately and handled according to the procedure for this office.

28:1-2 Tardiness

A student shall be admitted to class and a tardy slip made out by the classroom teacher. The teacher will determine the proper measure to be taken for the first and second offense.

On the third offense the student will be referred to the principal, who will determine the disposition of the case (student-principal conference). On the fourth offense a joint conference among parent-teacher-principal to discuss case of tardiness and reestablished parental knowledge of the law. Fifth offense - suspension. A central detention hall should be established by the administrator for tardy students - tardy to class, teacher assigned detention, third offense refer to office.

28:1-3 Truancy and defacement of property are clearly defined by law. Once the necessary procedures are completed for recording such

cases, it is up to the attendance department and courts to enforce the law.

28:1-4 Outsiders in school - The problem of outsiders in school is one of security. The classroom teacher must bring to the principal's attention the presence of any individuals who have no official business in the school. If the individual does not leave of his/her own accord, the police must be called in. Professional personnel have no legal right to do anything except request the removal of such individuals.

28:1-5 Use of Vulgar and Obscene Language

First offense - handled by teacher - notify administrator.

Second offense - call in parents - refer to the immediate supervisor and/or guidance for conference.

Third offense - parental conference and/or suspension.

28:1-6 Defiance of Authority and Verbal Assault

28:1-6.1 If these students on the first offense can be handled internally between teacher and administrator, child should return to classroom. If child persists in being defiant, parent must be called. Parent will be notified by mail of offense even if conference is not required.

28:1-6.2 If defiance of authority cannot be handled at the time of the incident the teacher will send for supervisor to remove student from the classroom.

28:1-6.3 Second offense - Parental conference and possible suspension.

28:1-6.4 Third offense - Suspension - refer to Special Services.

28:1-6.5 Physical Assault - immediate suspension. Conference with supervisor or principal as to extent of assault and pressing

of charges. Students should be referred to Special Services. In all cases of problem behavior all means within the school should be explored and exhausted before continued suspension or expulsion is considered. Children should be tested and social workers should investigate home situation.

28:2 Disruptive Children

Disruptive children should not be in a regular classroom. A child suspected of this type of problem should be referred to Special Services for testing. While the specialist is working with him he should be sent to a diagnostic and evaluation center. These classes will be conducted within the existing structure of the system until future provisions can be made. The Committee highly opposes a single, separate building for this purpose (such as School No. 22). We highly recommend this continuance of the study team in each school.

28:3 Special Assistance

28:3-1 Emotionally disturbed children should continue to be placed in special educational programs as recommended by the study team according to the laws of the State of New Jersey.

28:3-2 When in the judgment of the teacher or supervisor, a student requires the attendance of Special Services, the necessary forms shall be completed with the disposition of the case to date. If all avenues are exhausted and the teacher or administrator is not satisfied with the resolution of the case, the principal shall arrange to refer such cases to the employee-administrator liaison committee.

28:3-3 The standard forms and state laws referred to and applicable to this procedure will be included as part of this addendum to the contract.

28:4 Modification of Code

Any modification of the present security or discipline code in any school shall be made

only by agreement of the Principal and Liaison Committee of said school.

School boards have a prerogative to develop policies and procedures governing student discipline. Highland Park Bd. of Ed., P.E.R.C. No. 89-83, 15 NJPER 100 (¶20047 1989); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); Edison Tp. Bd. of Ed.; Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). But we have held mandatorily negotiable proposals to set forth a general statement of purpose, establish an advisory forum, and permit a teacher to send a disruptive student to the principal or recommend a suspension. Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980); Jersey City. Applying these precedents, we hold that the entire Section 28 is not mandatorily negotiable. The code's schedule of disciplinary offenses and penalties for students, its policies on disruptive and emotionally disturbed children, and its ban on any non-consensual modifications go beyond the limited exceptions to the non-negotiability of student discipline.

The next provision concerns teaching controversial questions. It provides:

30:1 Definitions

A question is controversial when one or more of the proposed answers are objectionable enough to a section of the citizenry to arouse strong reaction. The immediate cause of this reaction may be personal conviction or interest, or allegiance to an interested group. The most critically controversial questions are those characterized by current importance and by group opinion and interest.

30:2 Consideration of Questions

30:2-1 The consideration of controversial questions has a legitimate place in the work of public schools.

30:2-2 Sooner or later young people must meet and face such questions. It is important that they have experience with such questions under circumstances which promote consideration of all pertinent factors.

30:2-3 School treatment of such questions should not only promote fair and many-sided study of those questions; it should also help the student develop techniques of considering controversial questions - techniques which s/he will habitually use in later life.

30:2-4 The decision as to whether a controversial question shall become a matter for school study should be based on such consideration as the timeliness of the question, the maturity of the students, the needs of the students, and the purposes of the school.

30:2-5 The school must determine how much time and how much emphasis shall be given the question.

30:3 Handling of Questions

30:3-1 The handling of a controversial question in school should be free from the assumption that there is one correct answer which should emerge from the discussion and be taught authoritatively to the student.

30:3-2 Indoctrination is not the purpose, rather, the purpose is to have the students see as fully as possible all sides of the question.

30:3-3 A controversial question should be handled in an appropriate setting by an employee prepared for such a responsibility. Such question is always related to many things in the past and the present, which are important to any profitable study of it.

30:3-4 The wise employee avoids going into a controversial question beyond his/her own depth. A student would better be uninformed about a question than misinformed.

30:3-5 In addition to the planned discussion of controversial questions, there are occasions when such a question arises unexpectedly. The employee has the responsibility of discerning its controversial nature and handling it accordingly.

30:3-6 The proper avenues by which arguments on controversial questions reach students in school are the employees holding appropriate certificates, the students themselves, and the materials furnished by direction of the District.

30:4 District's Responsibility

30:4-1 The District should go on record with a declaration of policies for handling controversial questions in the schools. Having done so, it should protect the teaching and administrative personnel from partisan pressures.

30:4-2 In New Jersey the local board is by law responsible for determining what shall be taught in the schools, subject to general laws and regulations as prescribed by the State Board of Education.

30:4-3 The Board of Education should make sure that the students are provided with adequate and varied instructional materials which present fully all sides of the controversial questions to be considered.

30:4-4 Since present day live questions are, in the [main], those to be considered, current materials such as books, newspapers, magazines, and audio visual aids are highly important.

30:5 Citizen Involvement

30:5-1 No individual or group can claim the right to present arguments directly to

students in school. Such a "right" would make the schools battlegrounds for dozens of kinds of controversies.

30:5-2 A citizen has a right to assume that controversial questions are being presented fairly, and to protest to the Board of Education if convinced that they are not.

Policies for teaching controversial subjects are not mandatorily negotiable. Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986); Edison Tp. Bd. of Ed.; New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980). Applying these precedents, we hold that this article is not mandatorily negotiable.^{4/} We add, however, that the courts have observed that school boards are well-advised to discuss controversial question policies with teachers. Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17, 31-32 (1973); see also River Dell Ed. Ass'n v. River Dell Bd. of Ed., 127 N.J. Super. 350 (App. Div. 1973).

The last provision concerns the selection of textbooks. It provides:

31:1 Selection Method

31:1-1 The selection of standard and supplementary textbooks for use in the Paterson School System shall be listed and recommended by a representative group of teachers and professional school personnel appointed by the Superintendent of Schools.

^{4/} Although this provision, unlike that in Hunterdon, does not require the teaching of controversial matters, the proposal still centers on the philosophy of teaching.

During negotiations, the Board proposed that this section be amended to include this statement:

The Board, however, retains the right to make such determinations unilaterally.

The Association rejected that amendment.

A clause requiring consultation with teachers over textbooks is mandatorily negotiable, but a school board must retain the ultimate right to select the textbooks. Plainfield Bd. of Ed. As worded, section 31.1 does not protect that right and is not mandatorily negotiable.

ORDER

The following provisions are not mandatorily negotiable.

7:2-3.3, 3.4, 3.5, 3.6

9:1-1, 9:1-2 to the extent it bars reductions in force.

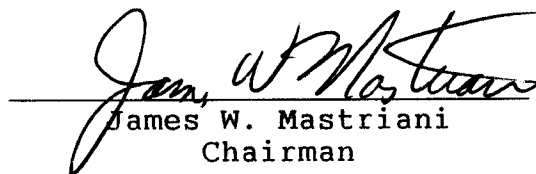
27:7

28

30

31:1

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: May 15, 1992
Trenton, New Jersey
ISSUED: May 18, 1992