

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF  
EDUCATION,

Petitioner,

Docket No. SN-77-3

-and-

PISCATAWAY TOWNSHIP PRINCIPALS  
ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board, the Commission rules on the negotiability of the Board's decision to reduce the length of the work year of elementary school vice-principals employed by the Board from twelve months to ten months. The Commission, in reversing its earlier determination on a similar issue in In re Fair Lawn Board of Education, P.E.R.C. No. 76-7, 1 NJPER 47 (1975), determines that the reduction in the work year of elementary school vice-principals was a required subject for collective negotiations. The Commission notes that this determination is consistent with a number of previous Commission determinations and judicial decisions. The work year is as much a term and condition of employment as is compensation and other terms and conditions of employment which are required subjects for collective negotiations.

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Appearances:

For the Petitioner, Rubin and Lerner, Esqs.  
(Mr. Frank J. Rubin, of Counsel)

For the Respondent, Harper, McCoy and O'Brien, Esqs.  
(Mr. John Harper, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (hereinafter the "Commission") on August 3, 1976, by the Piscataway Township Board of Education (hereinafter the "Board") seeking a determination as to whether a certain matter in dispute with the Piscataway Township Principals Association (hereinafter the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act").<sup>1/</sup> The dispute

<sup>1/</sup> The Commission's authority to determine whether the matter in dispute is within the scope of collective negotiations is provided by N.J.S.A. 34:13A-5.4(d), which states: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

concerns the negotiability of the Board's decision to reduce the length of the work year of elementary school vice-principals employed by the Board from twelve (12) months to ten (10) months. According to the scope petition, the dispute arose during the course of a negotiated agreement between the parties in effect beginning July 1, 1975 and ending June 30, 1979.

Initially the dispute reached the Commission in the context of an unfair practice charge and request for interim relief pursuant to N.J.A.C. 19:14-9.1 filed by the Association against the Board and docketed by the Commission on June 28, 1976 (Docket No. CO-76-355). Said request for interim relief was denied by the Chairman of the Commission on June 28, 1976. Subsequent to the filing of the aforementioned unfair practice charge, the Board filed the instant scope petition, relying on the charge as the statement of the dispute between the parties.

On August 26, 1976, pursuant to an order by the Acting Director of Unfair Practice Proceedings, the Unfair Practice Charge (CO-76-355) and the instant Scope Petition (SN-77-3) were consolidated and assigned to a Commission Hearing Examiner for further proceedings in accordance with the Commission's Rules. After due consideration and in order to effectuate the purposes of the Act as well as the desires of the parties, the Hearing Examiner assigned to the aforementioned consolidated proceedings, issued an order on November 1, 1976, pursuant to N.J.A.C. 19:15-1.1(b), severing the consolidated proceedings.

A proposed order to show cause and supporting brief was filed by the Board on October 7, 1976. The Board requested a stay of an arbitration demand filed by the Association on September 7, 1976, pursuant to the collectively negotiated agreement between the parties, pending a resolution of the instant dispute by the Commission.<sup>2/</sup> However, the Board, on November 30, 1976, by telephone communication with the Special Assistant to the Commission's Chairman withdrew without prejudice its request to restrain the above-mentioned arbitration. This telephone request was confirmed in a writing to the parties by the Special Assistant to the Commission's Chairman, dated November 30, 1976.

The factual context in which the instant dispute arose is not complicated and is essentially undisputed by the parties. It is undisputed that on or about April 27, 1976, the Board voted to change the terms and conditions of employment of four (4) elementary school vice-principals by reducing the length of their work year, effective July 1, 1976. Pursuant to the Association's request to negotiate the impact of the Board's decision on the terms and conditions of employment of the affected employees, several negotiation sessions were held in May and July of 1976. To date no agreement has been reached by the parties concerning the disputed issues.

<sup>2/</sup> The implied power of the Commission to grant interim relief during the pendency of a scope of negotiation proceeding and to suspend arbitration whenever it determines it reasonable to do so, has been recognized by the Courts of this State. cf. Board of Education of the City of Englewood v. Englewood Teacher's Assn., 135 N.J. Super 120 (App. Div. 1975).

It is the position of the Board that the decision to reduce the work year of elementary school vice-principals is a managerial and educational decision, not a unilateral change in a term or condition of employment, and therefore not mandatorily negotiable with the Association. The Board does however concede its duty to negotiate the impact of this decision on terms and conditions of employment, upon demand, with the Association. It is also asserted that the Board has met its duty to negotiate all aspects of its decision which impact upon terms and conditions of employment.<sup>3/</sup> In large measure, the Board relies on In re Fair Lawn Board of Education, P.E.R.C. No. 76-7, 1 NJPER 47 (1975), contending that the instant matter is virtually indistinguishable from the facts upon which the Commission issued its decision in Fair Lawn.

The Association also contends that the Commission's decision in Fair Lawn, supra is central to the decision in this matter. However, the Association relies on a different portion of that decision, pointing out that in Fair Lawn the Commission found that the Board's decision with regard to reduction of the work year was permissively negotiable, and any ensuing

<sup>3/</sup> We note that the Board's assertion that it has met its duty to negotiate the impact of its decision on the terms and conditions of employment is not material to the Commission's decision in this matter. Had this proceeding involved an alleged violation of the Act, rather than a request that the negotiability of an action by the Board be determined, the question of whether the Board had met its duty to negotiate would be germane to the decision.

agreement would appear to be permissible and enforceable. Further arguments are added by the Association concerning the Board's failure to negotiate the impact of its decision and the irrelevance of the Board's assertion concerning impact negotiations to a scope of negotiations proceeding. As we have previously addressed the Board's statements relating to impact negotiations, see supra at note 3, it is unnecessary to comment further on these arguments. The Association also cited two recent Commission decisions, In re Burlington City Board of Education, P.E.R.C. No. 77-4, 2 NJPER 256 (1976), appeal pending (App. Div. Docket No. A-22-76) and In re Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254 (1976), appeal pending (App. Div. Docket No. A-483-76), in support of its alternate contention that the Commission had at least implicitly reversed its prior ruling in Fair Lawn relating to the negotiability of a reduction in work year.

Both the Commission and the Courts of this State have dealt extensively and in detail with the duty of public employers to negotiate in good faith with exclusive representatives of public employees concerning hours of work and related terms and conditions of employment. While some of these cases were decided prior to the 1974 amendments to the Act,<sup>4/</sup> in part giving the Commission jurisdiction in scope of negotiations proceedings, their general precepts retain their validity and have been followed in

4/ Chapter 123, Public Laws of 1974.

later decisions.

In two decisions, handed down on the same day, the New Jersey Supreme Court set the tenor of a public employer's duty to negotiate concerning hours and work year. The Court in Board of Education of the City of Englewood v. Englewood Teacher's Association, 64 N.J. 1 (1973), stated, in defining the ambit of negotiations under the Act:

Surely working hours and compensation are terms and conditions of employment within the contemplation of the Employer-Employee Relations Act. Those matters... would appear to be most evident in the Legislative mind. Id. at pg. 6-7

Speaking again on this subject in Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973), the Court in differentiating between the managerial prerogative to fix the college calendar and the duty to negotiate the faculty's work year, explained:

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. Id. at pg. 12

The Appellate and Chancery Divisions of the Superior Court of this State have closely followed and applied the doctrines enunciated by the Supreme Court in the aforementioned cases; see Rutgers Council AAUP v. the Board of Higher Education of the State of New Jersey, 126 N.J. Super 53, (App. Div. 1973); Piscataway Township Education Association v. Piscataway Township Board of Education, Docket No. A-499-74 (App. Div. 1975); and Board of

Education of the Town of West Orange v. West Orange Education Association, 128 N.J. Super 281 (Ch. Div. 1974). In all of these cases the court, while affirming the right of a public employer to make managerial decisions without prior negotiation, distinguished this right from the right to alter employee work hours, finding the latter to be a "term and condition of employment", mandatorily negotiable, and thus not within the authority of the employer to alter unilaterally.

The decisions of this Commission, with one exception, have consistently held that hours of employment and correspondingly employees' work weeks and work years, are "terms and conditions of employment", subject to mandatory negotiations, and not within the ambit of managerial prerogatives.<sup>5/</sup>

<sup>5/</sup> See, e.g., In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975), alteration of hours of employment without requiring additional hours of work, mandatorily negotiable; In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143, appeal pending, (App. Div. Docket No. A-3403-75) (1976), length of employees' work day, subject to the duty to negotiate; In re Galloway Township Board of Education, P.E.R.C. No. 76-31, 2 NJPER 182, appeal pending (App. Div. A-3015-75) (1976), reduction and alterations in secretaries' working hours relate to required subjects for negotiations; In re Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254 (1976), appeal pending (App. Div. Docket No. A-483-73), unilateral alterations and extensions in teachers' hours of employment relate to mandatory subjects for negotiations; In re Burlington City Board of Education, P.E.R.C. No. 77-4, 2 NJPER 256 (1976), appeal pending (App. Div. Docket No. A-22-76), unilateral cancellation of one week of work and the compensation earned therefore, violative of the duty to negotiate in good faith, In re Board of Education of the Borough of Ridgefield, P.E.R.C. No. 77-9, 1 NJPER 284 (1976); adoption of school calendar is not mandatorily negotiable but that does not fix the number of work days for teachers which is mandatorily negotiable; and In re Green Brook Education Association, P.E.R.C. No. 77-11, 2 NJPER (1976), decided on facts similar to Ridgefield, supra.



Only in Fair Lawn, supra in which we held that the decision to reduce the work year of school principals from twelve (12) to ten (10) months was not a required subject of collective negotiations, has the Commission permitted a public employer unilaterally, without prior negotiations, to alter hours of employment. The extent to which the earlier Fair Lawn decision survives in the face of these later decisions now becomes an issue before this Commission.

Given the existing body of law surrounding the statutory mandate requiring good faith negotiations concerning "terms and conditions of employment"<sup>6/</sup> plain logic dictates that a public employer is required to negotiate with an exclusive majority representative with regard to an alteration in employees' work years just as it is required to negotiate with an exclusive majority representative with regard to proposed changes in their compensation. To require less would frustrate the purposes of the Act.<sup>7/</sup> Clearly, to the extent that it is inconsistent with this and the above mentioned decisions, Fair Lawn, supra must be reversed.

While the managerial prerogative of a public employer to effectuate economic savings must remain unfettered, any proposal to effect this savings by reducing the work year of its employees is a required subject for collective negotiations with the exclusive negotiations representative of those employees who may be

6/ N.J.S.A. 34:13A-5.3

7/ N.J.S.A. 34:13A-2.

affected by that proposal.<sup>8/</sup>

ORDER

With respect to the matter in dispute relating to the reduction in the work year of elementary school vice-principals which we have hereinabove determined to be a required subject for collective negotiations, the Piscataway Township Board of Education is hereby ordered to negotiate in good faith upon demand of the Piscataway Township Principals' Association.

BY ORDER OF THE COMMISSION

  
 Jeffrey B. Tener  
 Chairman

Chairman Tener, Commissioners Forst, Hipp and Parcels voted for this decision. Commissioner Hurwitz abstained. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey

January 26, 1977

ISSUED: January 27, 1977

- 8/ This decision should not be interpreted as requiring negotiations regarding a decision by a board of education to discontinue its summer school program as was the case in Fair Lawn, supra.
- 9/ It must be noted that, although the instant dispute did not originally arise with respect to a matter which the Association sought to have arbitrated pursuant to a negotiated grievance procedure, the Association later sought to arbitrate the change effectuated in the vice-principals' work year. Suffice it to say the Association's ability to submit the Board's decision to reduce the work year of the vice-principals to arbitration, assuming arguendo that it is otherwise arbitrable under the parties' collective negotiations agreement, is not dependent upon the decision in this instant matter. The Board's decision would have also been subject to arbitration pursuant to the Commission's prior determination enunciated in Fair Lawn, supra. /See In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 2 NJPER \_\_\_ (1976) in which the Commission held that if a dispute arises under a grievance/arbitration procedure contained in a contract entered into after the effective date of the amendments to the Act contained in L. 1974, c. 123 (January 20, 1975), the matter may be submitted to arbitration if it involves either a permissive or required subject of negotiations.<sup>7/</sup>