

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HIGHLAND PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-89-20

HIGHLAND PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several contract provisions that the Highland Park Education Association seeks to retain in a successor collective negotiations agreement with the Highland Park Board of Education. The Commission finds not mandatorily negotiable part of a clause that impermissibly limits the Board's right to terminate a teacher's contract to situations beyond its control. It finds mandatorily negotiable part of a clause which obligates the Board to review with the Association events which produce unanticipated budget cuts necessitating mid-year teacher layoffs. The Commission finds mandatorily negotiable a general statement of purpose regarding student discipline and a provision permitting a teacher to send disruptive students to the office. It finds not mandatorily negotiable a provision regarding the disruptive student's future disposition and a provision vesting responsibility for developing school discipline policies with the staff. The Commission finds mandatorily negotiable a provision preventing the Board from substituting supervisory duties for free time or preparation time. It finds not mandatorily negotiable a provision requiring that teachers not be assigned to supervisory duties alone. The Commission declines to rule on a dispute over calendar placement of evening conferences because of an ambiguity in the contract's language and the parties' disagreement over its meaning. A scope petition can be filed in the event a dispute arises in a specific factual setting.

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Appearances:

For the Petitioner, Cassetta, Taylor & Whalen  
(Bruce Taylor, consultant)

For the Respondent, Klausner, Hunter & Oxfeld, Esqs.  
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On October 11, 1988, the Highland Park Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a determination that several provisions the Highland Park Education Association ("Association") seeks to retain in a successor collective negotiations agreement are not mandatorily negotiable.

The parties have filed briefs and documents. These facts appear.

The Association is the majority representative of teachers and other Board employees. The Board and Association entered a collective negotiations agreement effective from July 1, 1986 to June 30, 1988. That agreement contained several articles which the Board seeks to delete from the successor agreement. This petition ensued.

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 403-404]

Article 6, Section F

The Board of Education agrees that it will honor the respective terms of each individual teacher's contract for the complete school year unless situations beyond the control of the local school board occur which prevent it from fulfilling such obligation.

If any State or Federal legislation is enacted or modified by Court action, which results in the local school board being required to amend its then current school budget, then the aforementioned obligation to guarantee employment to an individual teacher for the school year is voided. In the event of such unexpected situation, the school board agrees to review the details of such situation with the H.P.E.A. It is further understood that the foregoing neither adds to nor detracts from the responsibilities of teachers to perform satisfactorily in accordance with the policies, practices, and procedures in effect prior to this Agreement.

The Board contends that the article "impacts upon reduction in force in teaching staff members" and is illegal. The Association cites statutes concerning individual employment contracts of teaching staff and the Board's right to terminate the contract on notice. N.J.S.A. 18A:27-3; N.J.S.A. 18A:27-5 through 9. It asserts that the article is consistent with those laws.

The first two sentences impermissibly limit the Board's right to terminate a teacher's contract to situations beyond its control and is not mandatorily negotiable. The Courts have held that a board cannot be forced to pay an entire school year's salary if, after issuing a contract, it decides not to employ the teacher for the full year. Cf. Old Bridge Tp. Bd. of Ed. and Old Bridge Ed. Ass'n, 98 N.J. 523 (1985). The remainder of that paragraph obligates the Board to review with the Association events which produce unanticipated budget cuts necessitating mid-year teacher layoffs. The obligation to discuss such matters is mandatorily negotiable. Cf. Local 195, 88 N.J. at 409-410.

#### Article 16

- A. The Board recognizes its responsibility to give administrative support and backing to its teachers, although each teacher bears the primary responsibility for maintaining control and discipline in the classroom.
- B. When, in the judgment of a teacher, a student is by his/her behavior seriously disrupting the instructional program to the detriment of other students, the teacher shall send that student to the office. If the teacher deems the action of the student sufficient grounds for continued exclusion from the classroom, the teacher shall speak

to the principal or his/her designee prior to that continued exclusion. Any decision concerning the status of the student is subject to the normal grievance procedure. Under this clause, an arbitrator shall be restricted to a decision regarding whether the procedures agreed to by the parties have been violated. The arbitrator may not review the underlying decisions regarding student discipline.

- C. The administration and faculty shall share the responsibility of the general supervision of students on school property. Each school faculty shall develop appropriate procedures for dealing with student control and discipline in that school. These policies shall be adopted by the staff and forwarded to the central office.

The Board has the managerial prerogative to establish student discipline policy. Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); Edison Tp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). Paragraph A is a general statement of purpose and would not significantly interfere with educational policy decisions regarding student discipline. We have held that the first sentence of paragraph B is mandatorily negotiable. Jersey City. However, once a student is sent to the office to alleviate a disruption in class, the student's future disposition is a matter of educational policy which cannot be subject to the grievance procedure. The remainder of Paragraph B is not mandatorily negotiable. Paragraph C vests responsibility for developing or amending school discipline policies with the staff rather than the administration and is not mandatorily negotiable.

Article 17, Sections B.1 and B.3

1. The Board of Education shall not unilaterally substitute supervisory duties, e.g., supervision of cafeterias, sidewalks or playgrounds, for free time or preparation time.
3. Any supervisory duties performed by an appointee shall be compensated at the rate of \$1,000 per year per period. Such appointments shall be made by written assignment. An individual teacher who is assigned to such activity shall not be required to supervise alone.

B.1 is mandatorily negotiable. It does not bar the Board from assigning student supervision duties. Rather it preserves teacher preparation time. Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977); Newark Bd. of Ed., P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978), P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80).

The last sentence of B.3 is not mandatorily negotiable. The Board has a managerial prerogative to determine the number of students assigned to each teacher for classroom instruction. North Hunterdon Bd. of Ed., P.E.R.C. No. 85-100, 11 NJPER 233 (¶16090 1985); Rutgers Univ., P.E.R.C. No. 76-13, 2 NJPER 13 (1976). It follows that the Board may also determine how many students one teacher can supervise in non-instructional situations. The Association argues that the ban on using a single teacher is a matter of employee safety, but the disputed language does not reflect any safety concerns. Compare Maurice River Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987).

Article 18, Section F

No more than two (2) evening conference meetings may be scheduled during a school year (one (1) per conference period). Each evening conference will replace an afternoon conference. Evening conference periods shall not exceed three (3) hours and not run later than 10:00 p.m. Scheduling of evening conferences shall be handled by the building administrator or designee (not a unit member). Current scheduling practices shall be maintained. Teachers who work during evening conference periods shall receive one (1) additional personal day to be credited after the first evening conference. Calendar placement of the conferences shall be according to the current practice.

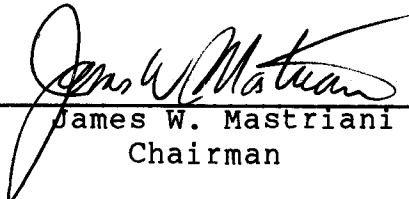
The underlined sentence is in dispute. The parties disagree with the meaning of the term "current practice." The Association states that "current practice" refers to the parties' present policy (Article 12.A, acknowledged as negotiable by the Board) of allowing the Association to have input in the development of the school calendar. The Board disagrees asserting that it could be read to refer to the current scheduling of conferences, rather than the consultation procedure, and thus could prevent the Board from modifying the schedule. We decline to rule on this dispute given the ambiguity in the contract language and the parties' disagreement over its meaning. A scope petition can be filed in the event a dispute arises in a specific factual setting.

ORDER

The following provisions of the predecessor agreement are not mandatorily negotiable: Article 6, §F (first two sentences), Article 16, §B (except first sentence) and C, Article 17, §B.3 (third sentence).

The following provisions of the predecessor agreement are mandatorily negotiable: Article 6, §F (except first two sentences), Article 16, §A and B (first sentence), Article 17, §B.1

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey  
January 9, 1989  
ISSUED: January 10, 1989