

P.E.R.C. NO. 86-84

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EGG HARBOR TOWNSHIP  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-85-46

EGG HARBOR TOWNSHIP  
EDUCATION ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which the Egg Harbor Township Education Association has filed. The grievance asserted that the Board violated the collective negotiations agreement by adopting a dress code without negotiations with the Association. The Commission holds that the adoption and contents of a dress code are not mandatorily negotiable, but aspects of a dress code's implementation severable from the decision to adopt the code are mandatorily negotiable.

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Appearances:

For the Petitioner, Salvatore Perillo, Esq.

For the Respondent, New Jersey Education Association  
(Eugene J. Sharp, UniServ Representative)

DECISION AND ORDER

On December 14, 1984, the Egg Harbor Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board sought a restraint of binding arbitration of a grievance which the Egg Harbor Township Education Association ("Association") had filed against it pursuant to its collectively negotiated grievance procedures. The grievance asserted that the Board violated the collective negotiations agreement by adopting a dress code without negotiations with the Association.

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

The Association is the majority representative of the Board's teachers and other certificated personnel with some exceptions. The Board and the Association have entered a collective negotiations agreement effective from July 1, 1983 to June 30, 1984. The agreement's grievance procedure ends in binding arbitration of grievances alleging a violation of the agreement's express written terms.

During the summer before the the 1984-1985 school year, the Board unilaterally adopted a faculty dress code. The dress code states:

Recognizing that students look to their teachers to set examples, the Egg Harbor Township Board of Education expects its personnel to be dressed in a manner that adds dignity to the education profession.

1. Acceptable attire for female personnel shall consist of the following:
  - A. Dresses.
  - B. Skirts with blouses and/or sweaters.
  - C. Pantsuits.
  - D. Slacks with blouses and/or sweaters.
2. Acceptable attire for male personnel shall consist of the following:
  - A. Suits with shirt and tie.
  - B. Leisure suits with or without ties.
  - C. Slacks with shirt and tie with or without jacket or sweater.
  - D. Slacks with turtleneck shirt/sweater and jacket.
3. The attire of all employees is expected to be clean and neat.
4. Whenever any teacher is desirous of wearing a form of attire not addressed in (1) and (2) above, a ruling may be obtained from the building principal. The principal's ruling may be

appealed to the superintendent. The superintendent's ruling may be appealed to the Board of Education.

5. When appropriate, the superintendent may relax the dress code (i.e., inclement weather, excessive temperatures, etc.).
6. When necessary, the building principal may relax the dress code for individual members of the faculty (i.e., field trips, unique school activities, etc.).
7. Industrial arts teachers are exempt from wearing ties when teaching shop classes.
8. Physical education instructors are exempt from the dress code and may substitute appropriate wearing apparel that has received the principal's approval.

On September 12, 1984, the Association filed a grievance asserting that the Board violated Article II, Negotiating Procedure, and Article IV, Teacher's Rights, when it adopted the dress code without first negotiating with the Association concerning its content. The Association's Professional Rights and Responsibilities Committee subsequently circulated a memorandum stating that the Association recognized the Board's right to implement a dress code, but not without negotiations concerning the code's content.

The superintendent denied this grievance and the Board refused to review that decision.

The Association then demanded binding arbitration. It seeks as a remedy that the Board be ordered not to implement the dress code until it negotiates its content and application to terms

and conditions of employment. It also asks that any discipline imposed on teachers for violating the dress code be rescinded.<sup>1/</sup>

The Board asserts that it has a non-negotiable managerial prerogative to adopt a dress code.<sup>2/</sup>

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.  
Id. at 154.

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<sup>1/</sup> The Association asserts further that one non-tenured teacher was discharged for not complying with the dress code. A review of the teacher's termination pursuant to the contractual 60 day termination clause reveals, however, that the termination was based on many other reasons besides the alleged dress code violation. Further, the grievance the Association seeks to submit to binding arbitration does not challenge the justness of that discharge. We will not consider its legal arbitrability further.

<sup>2/</sup> Additionally, it asserts the grievance is not contractually arbitrable. As discussed below, we cannot consider that argument.

Thus, we do not address the merits of the Association's grievance or the Board's defenses, or the question of contractual arbitrability. Instead we address only whether and to what extent a school board must negotiate with a majority representative when adopting a faculty dress code.<sup>3/</sup>

In Local 195, IFPTE v. State, 88 N.J. 393 (1982) ("Local 195"), our Supreme Court adopted a three-part test for making scope of negotiations determinations. The Court stated:

...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.

See also Wright v. City of East Orange Board of Education, 99 N.J. 112 (1985) ("Wright"); Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980).

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<sup>3/</sup> Since this case does not involve general grooming standards or dress codes for non-faculty, we limit our inquiry to the specific item in dispute: a dress code for public school teachers.

We first consider whether any statutes or regulations preempt negotiation over a school board's adoption of a dress code. Neither party asserts that one does nor have we been able to find one. N.J.S.A. 18A:11-1 empowers a school board to regulate its employees' conduct and N.J.S.A. 18A:27-4 empowers a school board to make rules governing their employment. These statutory provisions have been determined to encompass a school board's power to adopt reasonable dress codes. Carlstadt Bd. of Ed. v. Carlstadt Teachers Ass'n, 1980 S.L.D. 370 (State Bd of Ed), aff'd App. Div. Dkt. No. A-1469-8074 (March 26, 1982) ("Carlstadt"). But this general authority and discretion under school laws and cases do not preempt negotiations since no statute or regulation specifically sets a dress code for teachers. State v. State Supervisory Employees Assn, 78 N.J. 54, 80-82 (1978). Instead, the question becomes whether, under Local 195's first and third tests, the Board must exercise its authority and discretion through negotiations with the Association. Maywood Ed. Ass'n v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1975); Camden v. Dicks, 135 N.J. Super. 559 (L.Div. 1975).

We next consider whether the adoption of a dress code intimately and directly affects teachers' work and welfare. We believe it does. A dress code affects employee comfort, convenience and self-expression. A dress code may require employees to incur expenses buying and maintaining required articles of clothing. A

dress code may also require employees to spend a greater amount of non-working time in meeting appearance requirements. See, e.g., Bay Diner, 250 NLRB No. 29, 104 LRRM 1407 (1980); Town of Dracut, Case No. MUP-3699 (Mass. Labor Relations Comm., May 28, 1980); Enfield Bd of Ed, Case No. TPP-4026, Dec. No. 1609 (Conn. State Bd. of Labor Relations 1978); Norfolk Ed. Assn, Case No. 40 Neb. Ct. of Indus. Relations (Oct. 5, 1971); County of Putnam, 18 N.Y. PERB @4565 (ALJ opinion, 1985).

We next consider the school board's interests in adopting a dress code. We believe they are substantial. As the Appellate Division observed in Carlstadt, a dress code may help "...create an atmosphere of respect for [teachers] within a dignified environment conducive of discipline and learnings" (Slip Opin. at 4). Also, a dress code may bear "...a relationship to the furtherance of educational goals in that teachers are undeniably role models to their pupils." (Slip Opin. at 5).<sup>4/</sup>

Balancing the interests of school boards and teachers, and taking Carlstadt into account, we believe that requiring collective negotiations over a school board's decision to adopt a dress code would significantly interfere with its ability to regulate the educational climate. However, since a dress code does have such a direct effect upon employee welfare, permitting collective

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<sup>4/</sup> The instant dress code is almost identical to the one at issue in Carlstadt.



negotiations over aspects of a dress code's implementation severable from the decision to adopt the code would not significantly interfere with the determination of educational policy. City of Elizabeth v. Elizabeth Fire Officers Ass'n, 198 N.J. Super. 382 (App. Div. 1985). For example, a procedural requirement of advance notice would be negotiable. Old Bridge Bd. of Ed. v. Old Bridge Ed. Ass'n, 98 N.J. 523 (1985). Also, a dress code's application (as opposed to adoption) may present mandatorily negotiable issues of inconsistent, selective or unreasonable enforcement (for example, requiring sweaters to be worn when the temperature exceeds 80 degrees). Compare Piscataway Twp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982).<sup>5/</sup>

We now apply this discussion to the instant grievance. The grievance challenges only the Board's failure to negotiate the adoption and content of the dress code. While the demand for arbitration alludes generally to negotiations over the code's application, there are no specific allegations concerning what issues, besides the code's content, should have been negotiated and there is no basis for us to determine whether any issue might be

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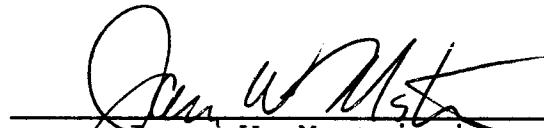
<sup>5/</sup> These examples of severable issues are not meant to exhaust the list of possibly negotiable subjects. We will consider additional topics case-by-case. We specifically reserve judgment on the arbitrability of any disciplinary determination involving an alleged violation of a dress code. Such a determination would require assessment of N.J.S.A. 34:13A-5.3, as amended, a task we do not undertake now.

severable from the decision to adopt the code. On balance, then, we believe this dispute predominantly involves the adoption and content of the dress code and we will restrain arbitration entirely.

ORDER

The Board's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Hipp abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
December 12, 1985  
ISSUED: December 13, 1985