

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUMSON-FAIR HAVEN REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-81

RUMSON-FAIR HAVEN REGIONAL
SCHOOL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of portions of Article 7.1 (Employee Evaluation; Employee Rights) in the expired collective negotiations agreement between the Rumson-Fair Haven Regional School Employees Association and the Rumson-Fair Haven Regional High School Board of Education. The Commission finds that the requirement that the Board conduct a pre-evaluation conference is mandatorily negotiable, except that Article 7.1 is not mandatorily negotiable to the extent the discussion of the "focus of the evaluation" during a pre-evaluation conference restricts the Board's right to establish or choose which criteria will be applied during the subsequent evaluation. Article 7.1 also sets a maximum number of evaluations for teachers. The Commission finds that aspect mandatorily negotiable, but repeats that its holding does not preclude informal observations and discussion.

The Commission grants the Board's request for a restraint of binding arbitration of a grievance filed by the Association. The grievance alleges that the Board violated Article 7.1 by failing to provide three faculty members with a pre-evaluation conference. The restraint of arbitration is granted to the extent the grievance contests the Board's alleged failure to notify the teachers of the time and date of observations. The request for a restraint is otherwise denied.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 99-55

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Appearances:

For the Petitioner, Reussille, Mausner, Carotenuto,
Barger & Steel, attorneys (Martin M. Barger, on the
brief)

For the Respondent, Balk, Oxfeld, Mandell & Cohen,
attorneys (Sanford R. Oxfeld, on the brief)

DECISION

On April 20, 1998, the Rumson-Fair Haven Regional High School Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Rumson-Fair Haven Regional School Employees Association. The grievance alleges that the Board violated Article 7.1 of the parties' collective negotiations agreement by failing to provide three faculty members with a pre-evaluation conference. The Board also seeks a determination that portions of Article 7.1 (Employee Evaluation; Employee Rights) are not mandatorily negotiable and cannot be included in a successor collective negotiations agreement.

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

The Association represents teachers, guidance counselors, librarians, nurses, secretaries, cafeteria workers and custodians employed by the Board. The Board and the Association are parties to a collective negotiations agreement which was to expire on June 30, 1997. The parties agreed to extend the contract until June 30, 1998.

The petition states that a dispute arose during negotiations. Because the parties' contract extension had not yet expired and because a request for the appointment of a grievance arbitrator had been filed, we sought clarification of the circumstances giving rise to the petition. The Board confirmed that a grievance had been filed by the Association on November 10, 1997 alleging a violation of Article 7.1 and that arbitration had been requested. That dispute triggered our scope of negotiations jurisdiction.

On October 19, 1998, the Board informed us that the parties had reached an impasse in negotiations. A mediator has been assigned and Article 7.1 is one of the unresolved issues before the mediator.

Article 7.1 provides, in part:

There shall be annually up to four evaluations, two per semester, together with mandated pre-evaluation conferences (where the focus of the evaluation will be determined) and post-evaluation conferences, for non-tenured teaching staff members. There shall be annually up to three (3) formal evaluations, together with

pre-evaluation conferences (where the focus of the evaluation will be determined) and post-evaluation conferences for tenured teaching staff members.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v.

Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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]

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the parties may have.

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 404-405]

Article 7.1 deals with teacher evaluations, a subject which intimately and directly affects teachers' work and welfare. Evaluations contribute to retention, tenure, promotion and compensation decisions. Employees therefore have a strong interest in understanding the employer's expectations and being assured that evaluations will be conducted fairly. A pre-evaluation conference affords employees the opportunity to receive notice of evaluation criteria so that they know what the evaluator will be looking for.^{1/}

Neither party argues preemption, so we turn our attention to any alleged interference with educational policy determinations.

The Board contends that Article 7.1's mandate for a "pre-evaluation conference" requires advance notice of an evaluation, thereby significantly interfering with its prerogative to establish the manner in which to conduct evaluations. See Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), aff'd 177 N.J. Super. 479 (App. Div. 1981), aff'd 91 N.J. 38 (1982); see also Boonton Bd. of Ed., P.E.R.C. No. 80-78, 6 NJPER 12 (¶11006 1979). However, the requirement for a pre-evaluation conference is distinguishable from the advance notice requirements found not mandatorily negotiable in Bethlehem Tp. Bd. of Ed. and Boonton Bd. of Ed. Those cases addressed

^{1/} Under the State's Performance Assessment Review program, an employee and his or her supervisor shall meet in advance to discuss performance standards. N.J.A.C 4A:6-5.2.

clauses that required a specific time frame for notice to teachers of upcoming observations. In the instant case, the disputed clause requires that there be a pre-evaluation conference sometime before a formal evaluation. The Board is free to schedule both pre-evaluation conferences and evaluations when it chooses, so long as the conference precedes the evaluation. No advance notice of the time and date of an observation is required.

Finding that the requirement that the Board conduct a pre-evaluation conference would not significantly interfere with any educational policy determinations, we conclude that this aspect of Article 7.1 is mandatorily negotiable. However, we restrain arbitration to the extent the grievance challenges the Board's alleged failure to notify the teachers of the specific time and date of their observations. Bethlehem Tp. Bd. of Ed.

The Board also challenges the portion of Article 7.1 that requires that the discussion during the pre-evaluation conference include a determination of the "focus of the evaluation." It argues that requiring such a discussion is not mandatorily negotiable because it would impermissibly interfere with the Board's prerogative to determine evaluation criteria.

The Association acknowledges that formulation of evaluation criteria is not mandatorily negotiable. See Bethlehem Tp. Bd. of Ed., 91 N.J. at 47. It argues, however, that the proposed language establishes the procedure to be followed for the

pre-evaluation conference and subsequent evaluation and is therefore mandatorily negotiable. As we said above, employees have an interest in knowing what their evaluators will be looking for and against what standards their performance will be measured. Employers also have an interest in identifying performance objectives that employees can strive to achieve.

Applying Local 195's balancing test, we find that Article 7.1 is not mandatorily negotiable to the extent the discussion of the "focus of the evaluation" during the pre-evaluation conference restricts the Board's right to establish or choose which criteria will be applied during the subsequent evaluation. But it is a mandatorily negotiable evaluation procedure to the extent the contract language requires a meeting to inform teachers about the criteria to be applied during evaluations.

Article 7.1 also sets a maximum number of evaluations for tenured and non-tenured teachers. Although education law sets the minimum number of teacher evaluations,^{2/} no statute or

^{2/} N.J.S.A. 18A:27-3.1 (Non-tenured teaching staff; observation and evaluation; conference; purpose) provides:

Every board of education in this State shall cause each non-tenured teaching staff member employed by it to be observed and evaluated in the performance of her or his duties at least three times during each school year but not less than once during each semester. Said evaluations are to take place before April 30 each year. The evaluations may cover that period between April 30 of one year and April 30 of the succeeding

regulation preempts negotiations over the maximum number of evaluations. The Association argues that the requirement of a maximum number of evaluations is merely a procedural requirement which generally does not interfere with the Board's managerial prerogative to evaluate its employees or establish criteria for evaluations. We agree.

2/ Footnote Continued From Previous Page

year excepting in the case of the first year of employment where the three evaluations must have been completed prior to April 30. The number of required observations and evaluations may be reduced proportionately when an individual teaching staff member's term of service is less than one academic year. Each evaluation shall be followed by a conference between that teaching staff member and his or her superior or superiors. The purpose of this procedure is to recommend as to reemployment, identify any deficiencies, extend assistance for their correction and improve professional competence. [emphasis supplied]

N.J.A.C. 6:3-4.1 (Supervision of instruction; observation and evaluation of non-tenured teaching staff members) provides:

(a) For the purpose of this section, the term "observation" shall be construed to mean a visitation to an assigned work station by a certified supervisor of the local school district for the purposes of formally collecting data on the performance of a non-tenured teaching staff member's assigned duties and responsibilities and of a duration appropriate to those duties and responsibilities.

1. Each of the three observations required pursuant to N.J.S.A. 18A:27-3.1 shall be conducted for a minimum duration of one class

period in a secondary school, and in an elementary school for the duration of one complete subject lesson. [emphasis supplied]

In Brookdale Community College, 10 NJPER 111, 113 (¶15058 1984), we held that contract language dealing with the number, frequency, and scheduling of evaluations was procedural and mandatorily negotiable. That decision is consistent with earlier case law requiring negotiations over the maximum number of evaluations. Manchester Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-65, 5 NJPER 125 (¶10074 1979) (limit on number of teacher evaluations mandatorily negotiable); see also Matawan-Aberdeen Reg. School Dist., P.E.R.C. No. 90-98, 16 NJPER 300 (¶21123 1990), recon. den. P.E.R.C. No. 91-4, 16 NJPER 434 (¶21185 1990), aff'd NJPER Supp.2d 257 (¶213 App. Div. 1991) (holding mandatorily negotiable clause permitting only one observation of a tenured employee, except that either party could request an additional observation in the event the one was unfavorable). This holding protects the employees' interest in having some finality to each year's evaluation cycle, while at the same time preserving management's right and obligation to evaluate each employee each year. On balance, the proposed negotiated limits would not significantly interfere with any policy determinations and are therefore mandatorily negotiable.

We repeat our admonition in Matawan v. Aberdeen Reg. School Dist., that our holding does not preclude informal observations and discussion about teaching performance or restrict the contents of the required annual written performance report. 16 NJPER at 301. In addition, we note that should an occasion

arise where the Board has a specific need to conduct an additional evaluation, it may raise its educational policy concerns in seeking a restraint of arbitration of any grievance challenging its decision.

ORDER

Article 7.1 is not mandatorily negotiable to the extent the discussion of the "focus of the evaluation" during the pre-evaluation conference restricts the Board's right to establish or choose which criteria will be applied during the subsequent evaluation. The article is otherwise mandatorily negotiable.

The request of the Rumson-Fair Haven Regional High School Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the Board's alleged failure to notify the teachers of the time and date of observations. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: December 17, 1998
Trenton, New Jersey
ISSUED: December 18, 1998