

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-95

ROCKAWAY TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Rockaway Township Board of Education for a restraint of binding arbitration of a grievance filed by the Rockaway Township Education Association. The grievance contests the Board's requirement that summer school teachers work on July 5, 1999. The Commission finds that the Board had a right to schedule classes on July 5, 1999, but under N.J.S.A. 18A:25-3 it did not have a right to require teaching staff members to work on that public holiday. The Commission also notes that the amount of compensation for working on a holiday is mandatorily negotiable.

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. 2001-6

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Appearances:

For the Petitioner, Lindabury, McCormick & Estabrook,  
P.C., attorneys (Anthony P. Sciarrillo, on the brief)

For the Respondent, Bucceri & Pincus, attorneys  
(Gregory T. Syrek, on the brief)

DECISION

On April 4, 2000, the Rockaway Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Rockaway Township Education Association. The grievance contests the Board's requirement that summer school teachers work on July 5, 1999.

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

The Association represents classroom teachers and other certified personnel. The Board and the Association are parties to

a collective negotiations agreement effective from July 1, 1996 through June 30, 1999. The grievance procedure ends in binding arbitration.

The agreement contains a provision requiring that summer school positions be adequately publicized; all materials and supplies be provided; the salary be \$2040 for the five-week, three-hour day session; and all coordinators of the summer school session receive an additional stipend.

Article IX provides, in part:

A. The Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for purpose of engaging in collective negotiations and other activities for mutual aid and protection. As a duly elected body exercising governmental power under color of law of the state of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the employment of any rights conferred by Chapter 123, Public Laws of 1974, or other laws of New Jersey or the Constitutions of New Jersey and the United States. That it shall not take punitive action against any teacher with respect to hours, wages, or any terms and conditions of employment by reason of his/her membership in the Association and its affiliates, his/her participation in activities of the Association and its affiliates which do not conflict with normal professional duties, collective negotiations with the Board, or his/her institution of any grievance, complaint or proceeding under this Agreement, or otherwise, with respect to any terms or conditions of employment.

B. Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he/she may have under New Jersey School Laws or other applicable laws and regulations.

In June of 1999, the Board posted an announcement that it would be hiring teachers for the five-week summer school session. Before the start of the summer session, those teachers hired for the session received a notice that attendance on Friday, July 2 and Monday, July 5 would be mandatory.

On July 14, 1999, the Association submitted a grievance. The superintendent's certification states that the grievance was filed on behalf of one of the teachers and alleges that the Board violated the agreement when it scheduled a summer session on Monday, July 5, a legal holiday. The grievance seeks an extra day's salary or compensatory day off in lieu of July 5, 1999 for all summer school teachers.

On September 9, 1999, the Board denied the grievance. The denial states, in part:

After careful deliberation the Board of Education has decided to reject the grievance and the remedy that you sought. It is the position of the Board of Education that no contract violation took place regarding the workday in question.

All teaching staff were duly notified of the decision to operate the summer program on July 5th. Staff members were given the choice of whether or not they wished to be employed in the summer program. By agreeing to employment in the program with full knowledge that this entailed working on July 5th the staff accepted the July 5th date as a workday. In short, they chose to work on that day.

The Board of Education does not find merit in the argument that this should now be a grievance after the fact, and, therefore, denies your suggested remedy.

On September 23, 1999, the Association demanded arbitration. It described the grievance to be arbitrated as: "The Board of Education requirement that all summer school teachers work on July 5 violated Article IX A. & B. and other relevant provisions of the Agreement." This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual arbitrability or merits of the grievances.

N.J.S.A. 18A:25-3 provides:

No teaching staff member shall be required to perform his duties on any day declared by law to be a public holiday and no deduction shall be made from such member's salary by reason of the fact that such a public holiday happens to be a school day and any term of any contract made with such member which is in violation of this section shall be void.

N.J.S.A. 36:1-1 sets forth the days considered to be public holidays. It provides that "whenever any of the days herein enumerated can and shall fall on a Sunday, the Monday next following shall, for any of the purposes herein enumerated be

deemed a public holiday...." July 4, 1999 fell on a Sunday so the next day became the public holiday.

The Board asserts that the scheduling of summer school on July 5 did not violate any statute because it did not require teachers to work on July 5 or threaten any personnel with a deduction in salary if they did not work. The Board contends that N.J.S.A. 18A:25-3 does not prohibit a school from scheduling sessions on a public holiday, but allows teaching staff members to be absent on such days without losing any pay. The Board asserts that the teachers knew ahead of time that class would be held on July 5, none of the teachers objected to classes being scheduled on July 5, and no teachers took that day off.

The Board relies on Dohm v. West Milford Bd. of Ed., 1983 S.L.D. 24 and Freehold Reg. H.S. Ed. Ass'n and Walter Holcombe v. Bd. of Ed. of Freehold Reg. H.S. Dist., 1977 S.L.D. 1057. The Board states that these decisions hold that N.J.S.A. 18A:25-3 does not prohibit scheduling school on public holidays so long as teachers are not required to work and provided their pay is not docked; and that teachers who report to work on a public holiday are not entitled to receive an extra day's pay because they would not be working any more days. The Board further asserts that permitting this grievance to be arbitrated would restrain the Board from exercising its governmental policy of setting the school calendar. It states that it sought to schedule five weeks of classes without disruption. It contends that if it had not

scheduled class on July 5, the last day of the five-week session would have ended on a Monday in August. Taking into account family vacation schedules, it reasoned that more students would attend on July 5, the middle of the session, than a lone Monday in August as the last day of the session.

The Association contends that the Board misstates the dispute. It states that the Association's grievance is not an attack on the Board's prerogative to establish a school calendar. The Association asserts that this matter involves a term and condition of employment set by statute. It asserts that N.J.S.A. 18A:25-3 gives teachers the right to take off public holidays without loss of pay. The Association contends that the notice stating that attendance on July 2 and July 5 was mandatory, restricted employees' ability to exercise their right to take off a public holiday. It asserts that the Board's analysis that acceptance of summer employment meant acceptance of July 5 as a work day is contrary to the protections of N.J.S.A. 18A:25-3. The Association also contends that the parties' agreement states that rights secured by the school laws shall not be denied or restricted (Article IX, Teachers Rights and Responsibilities).

The Board responds that its notice that attendance was mandatory on July 2 and July 5 did not deny any teacher the right not to work on July 5. The Board also relies on State of New Jersey (Rowan University), P.E.R.C. No. 99-26, 24 NJPER 483 (¶29224 1998), aff'd 25 NJPER 30 (¶31009 App. Div. 1999), where we

found that the State had a managerial prerogative to require employees to work involuntarily (at holiday pay rates) on previously scheduled holidays. The Association responds that State of New Jersey is irrelevant because it involves a dispute over work assignments on contractual holidays at premium pay and that the dispute here relates to the Board's actions "designed to frustrate and chill the exercise of statutory rights set forth in N.J.S.A. 18A:25-3."

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]

A statute or regulation will not preempt negotiations unless it expressly, specifically, and comprehensively fixes an employment condition and thereby eliminates the parties' discretion to vary it through negotiations. Bethlehem Tp. Bd. of



Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).


The Board had a right to schedule classes on July 5, 1999, but given N.J.S.A. 18A:25-3 it did not have a right to require teaching staff members to work on that public holiday. Black Horse Pike Bd. of Ed., P.E.R.C. No. 84-157, 10 NJPER 448 (¶15200 1984). We reject the argument that since teaching staff members knew that classes were scheduled for July 5 when they agreed to work during summer school, they waived their statutory right to not perform any duties on that day. Such a broad and general waiver claim would mean that all teachers who agree to work during the regular school year also waive their right not to work on legal holidays.

Whether the Board breached the parties' contract when it distributed a memorandum mandating that teaching staff members work on July 5 is a question for the arbitrator. The Board may make its argument to the arbitrator that all teachers, in fact, worked on the holiday and that none were docked any pay. The cases relied on by the Board merely establish the framework of this decision. They do not answer whether the Board illegally required teachers to work on July 5 and whether, if it did, it breached the parties' contract. We also note that the amount of compensation for working on a holiday is a mandatorily negotiable subject and that the Association's grievance is effectively seeking premium pay for such work.

ORDER

The request of the Rockaway Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: July 20, 2000  
Trenton, New Jersey  
ISSUED: July 21, 2000