

P.E.R.C. NO. 90-107

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-11

ROCKAWAY TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that certain proposals of the Rockaway Township Education Association in successor contract negotiations with the Rockaway Township Board of Education are mandatorily negotiable and others are not.

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Respondent.

Appearances:

For the Petitioner, Green & Dzwilewski, attorneys  
(Allan P. Dzwilewski, of counsel)

For the Respondent, Bucceri & Pincus, attorneys  
(Gregory T. Syrek, of counsel)

DECISION AND ORDER

On September 9, 1989, the Rockaway Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a declaration that certain proposals of the Rockaway Township Education Association are not mandatorily negotiable.

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

The Association represents the Board's certified personnel, including teachers. The Board and the Association entered into a collective negotiations agreement effective July 1, 1987 to June 30, 1989. During negotiations for a successor contract, the Association proposed retaining several contractual provisions which the Board contends are not mandatorily negotiable. This petition ensued.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a proposal is mandatorily negotiable if:

(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].

We do not consider a proposal's wisdom. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Article IV of the prior contract is entitled Leaves of Absence. Paragraph A.2.c provides:

In the event of absence for illness or injury in excess of five (5) consecutive days, the Superintendent may require a physician's certificate as a prerequisite for continued sick leave salary payments. During periods of prolonged absence, the Superintendent may require submission of medical certificates at two week intervals, certifying that the employee is under medical care and cannot perform regularly assigned school duties.

The establishment of a reasonable sick leave verification policy is not mandatorily negotiable. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 83-111, 9 NJPER 152 (¶14072 1983); see also City of Passaic, P.E.R.C. No. 89-77, 15 NJPER 93 (¶20041 1989), aff'd App. Div. Dkt. No. A-2667-88T3 (11/27/89); Bor. of Cresskill, P.E.R.C. No. 89-19, 14 NJPER 569 (¶19239 1988). This contractual provision restricts the Board's prerogative to determine when to demand medical proof of

illness and is thus not mandatorily negotiable.<sup>1/</sup> The employees, however, may grieve the application of a sick leave verification policy to deny benefits.

Article IV, Subsection A.3 provides, in part:

In the event that sick leave accumulation is exhausted while a regular employee is on sick leave due to prolonged illness or disability, he or she shall be granted additional full pay allowance for the extended absence under the following conditions....

This provision is preempted by N.J.S.A. 18A:30-6 which precludes boards from guaranteeing extended disability leave benefits and requires them to retain their discretion to deal with each case individually. Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance and Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Bayonne Bd. of Ed., P.E.R.C. No. 89-25, 14 NJPER 579 (¶19245 1988). The Board has not asked us to decide the negotiability of the paragraphs of Section A.3 so we limit our ruling to the quoted text.

Article X is entitled Association Rights and Privileges.

Section G provides:

The Association shall have the right to use the inter-school mail facilities and school mailboxes as it deems necessary, with the knowledge of building principals and provided such use of interschool mail facilities is not deemed by the Superintendent to interfere with normal school operations.

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<sup>1/</sup> In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987) does not reopen this caselaw.

The Board contends that this provision violates the federal Private Express statutes, 18 U.S.C. §§ 1693-1699 and 39 U.S.C. §§ 601-606, as interpreted in Regents of the Univ. of Cal. v. P.E.R.B., \_\_\_ U.S. \_\_\_, 99 L.Ed.2d 664, 128 LRRM 2009 (1988). In a companion case decided today, litigated by the same attorneys, we have analyzed that assertion in determining the negotiability of a nearly identical clause. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 90-104, 16 NJPER \_\_\_ (¶\_\_\_ 1990). The article speaks too broadly in allowing Association use of inter-school mail facilities as it deems necessary, but mandatorily negotiable to the extent it permits the Association to place communications in school mailboxes directly, without prior use of an inter-school mail system. See Ramapo.

Article XIII is entitled Teachers' Hours and Teaching Load. Subsection C.2 provides:

Teachers participating in non-teaching functions after normal school hours do so on a voluntary basis without additional compensation as part of their professional responsibilities.

Before the enactment of L. 1989, c. 269, codified at N.J.S.A 34:13A-22 et seq., provisions making teacher participation in extracurricular activities voluntary were not mandatorily negotiable. Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981). The parties dispute whether the new law applies and whether a provision making participation voluntary is mandatorily negotiable now. We will assume the law applies, but

this provision is still not mandatorily negotiable because it does not preserve the employer's reserved right under that law to assign a qualified teacher absent a qualified in-district volunteer or qualified out-of-district applicant. See Ramapo.

Subsection B.4 of Article XIII provides:

It is the intent of the Board to eliminate professional supervision of daily lunch time activities unless adequate supervision cannot be provided.

This provision is not mandatorily negotiable. In re Byram Tp. Bd. of Ed.; Upper Saddle River Bd. of Ed., P.E.R.C. No. 88-58, 14 NJPER 119 (¶19045 1987). But the Association may negotiate over rotation of the duties among teachers and compensation. Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1988), aff'd App. Div. Dkt. No. A-2131-88T5 (10/12/89).

Article XIV is entitled Non-Teaching Duties. It provides:

- A. The Board shall employ aides who shall perform the following duties whenever possible and within budgetary capabilities:
1. lunchroom supervision;
  2. playground duties;
  3. bus duty;
  4. collection of monies;
  5. instruction (under supervision of the teacher);
  6. Any other duties mutually agreed upon by principal and staff of each building.
  7. The building principal and staff of each building shall consult at a meeting called by the building principal, concerning assignments of aides, prior to the time such assignments are made.
- B. The Board recognizes the value of instructional aides and will endeavor to employ them as the Board deems advisable in the best interest of the district.

Section A is not mandatorily negotiable. Byram Tp.; Upper Saddle River; Union Tp. Bd. of Ed. While a clause relieving teachers of collecting money for vendors has been held mandatorily negotiable, North Hunterdon Bd. of Ed., P.E.R.C. No. 85-100, 11 NJPER 233 (¶16090 1985), this provision, as worded, significantly interferes with the employer's prerogative to hire personnel. Upper Saddle River. Contrast Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987) (clause obligating board to provide secretarial assistance to librarians within budgetary constraints is mandatorily negotiable, given that it cannot require board to hire additional personnel). Section B, however, is mandatorily negotiable to the extent it can be construed as a non-binding statement of purpose. North Hunterdon; Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983).

Article XV is entitled Teacher Employment. Section A provides:

- A. 1. The Board will endeavor to hire only fully certified teachers holding standard certificates issued by the New Jersey State Board of Examiners for every regular teaching assignment.
2. The Board shall continue observing State and Federal laws relating to discrimination.

Subsection A.1 is not mandatorily negotiable. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). Subsection A.2. is

mandatorily negotiable and may remain in a contract. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 87-151, 13 NJPER 508 (¶18189 1987); Maurice River Tp. Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987). Disputes under this subsection may be submitted to the negotiated grievance procedure, but we will restrain binding arbitration of a dispute over alleged hiring discrimination upon proper application. Teaneck.

Article XVI is entitled Teacher Assignment. Subsections A.3 and B.1 provide:

- A. 3. In the event that changes in such schedules, grade and/or subject assignments, or building assignments, are proposed, any teacher affected shall be notified promptly in writing and, upon the request of the teacher, the changes shall be promptly reviewed between the Superintendent or his/her representative and the teacher affected, and at the teacher's option, a representative of the Association.
- B. 1. Schedules of teachers who are assigned to more than one school shall be arranged so that no teacher shall be required to engage in an unreasonable amount of interschool travel. Such teachers shall be notified of any changes in their schedules as soon as it is practicable.

Subsection A.3 and the second sentence of subsection B.1 address procedures for notifying teachers of changes in assignments and for non-binding review of such changes. These provisions do not compromise the Board's right to determine teacher assignments and are mandatorily negotiable. The first sentence of subsection B.1, however, is not mandatorily negotiable. Ridgefield Park; UMDNJ, P.E.R.C. No. 88-134, 14 NJPER 451 (¶19186 1988); Plainfield Bd. of



Ed., P.E.R.C. No. 84-134, 10 NJPER 346 (¶15159 1984); South River Bor. Bd. of Ed., P.E.R.C. No. 83-135, 9 NJPER 274 (¶14126 1983).

Article XVII is entitled Voluntary Transfers and Reassignments. Section B provides:

- B. In the determination of requests for voluntary reassignments and/or transfer, the wishes of the individual teacher shall be considered to the extent that the transfer does not conflict with the instructional requirements and best interests of the school system and no such request shall be denied without explanation. If a teacher's request for transfer has been denied, a renewed or subsequent request made in the following school year shall be regarded as a new request.

This section predominantly involves mandatorily negotiable matters of procedure. The second sentence cannot be viewed as establishing a substantive limit on a board's right to deny a request as opposed to a procedural right to have a request considered. We contrast cases in which boards were required to honor requests for transfer, rather than merely to consider them and explain any denials.

Ridgefield Park; Piscataway Tp. Bd. of Ed., P.E.R.C. No. 87-151; National Park Bd. of Ed., P.E.R.C. No. 87-102, 13 NJPER 194 (¶18082 1987); Edison Tp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983).

Article XVIII is entitled Involuntary Transfers and Reassignments. Section B provides:

- B. An involuntary transfer or reassignment shall be made only after a meeting between the teacher involved and the appropriate administrator, at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the transfer

or reassignment at this meeting, upon the request of the teacher, the Superintendent shall meet with the teacher. The teacher, may at his/her option, have an Association representative present at such meeting.

It does not restrain the Board's right to make a transfer after complying with the specified procedures and is mandatorily negotiable. Local 195; Plainfield.

Section D of Article XVIII provides:

D. Seniority is defined as the length of time that an employee has worked within the district from most recent date of hire and shall apply to any certificate that such employee may hold. The most recent date of hire is determined by the date on which an employee signed the first of his/her present series of contracts. Seniority rights shall terminate in the event an employee is dismissed for cause or in the event an employee voluntarily quits his or her employment within the district. Seniority shall not accumulate during such periods of time as an employee is not actively on the payroll within the district, for example, when an employee is absent because of leave of absence in excess of six (6) months. Seniority shall afford only such rights as are specifically set forth in this Agreement and none other.

The Board argues that this provision makes seniority the sole criterion in deciding whether a teacher shall be involuntarily transferred. If that were the case, the provision would not be mandatorily negotiable under Ridgefield Park. But that is not the case. The provision does not mention transfers and its last sentence limits the use of seniority to "such rights as are specifically set forth in the Agreement and none other." Nor does the definition of seniority in N.J.A.C. 6:3-1.10 preempt this

contractual definition. The parties may not agree to vary a definition used to determine statutory rights, but they may adopt their own definition for purposes of determining contractual rights.

Article XX is entitled Promotions. Section C provides:

- C. All qualified teachers shall be given adequate opportunity to make application, and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants and other relevant factors. Whenever possible, appointments shall be made not later than sixty (60) days after the closing date for applications for the specific position vacancy.

The first and third sentence are mandatorily negotiable matters of procedure. Trenton Bd. of Ed., P.E.R.C. No. 88-139, 14 NJPER 458 (¶19190 1988); E. Brunswick Bd. of Ed., P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981).<sup>2/</sup> The second sentence encroaches upon the Board's right to determine promotional criteria.

Article XXI is entitled Bedside Teaching. Section B provides:

- B. In filling such positions from among the staff of Rockaway Township School District, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, length of service in the Rockaway Township School District, and when all other factors are substantially equal, preference shall be given first to teachers

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<sup>2/</sup> We do not read the last sentence as requiring the Board to make any appointments. It may leave a position vacant. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981).

who have taught the subject area and/or grade level in question during the regular school year in the district and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding years. Teachers employed in the Rockaway Township School District shall be given priority to such assignments before appointment to applicants from outside the district.

Under Edison Tp., this section is not mandatorily negotiable.

ORDER

The following provisions of the 1987-1989 contract are not mandatorily negotiable:

Article IV, A.2.c and A.3.

Article X, G to the extent it gives the Association a right to send unstamped mail through inter-school mail facilities in violation of the Private Express statutes..

Article XIII, B.4 and C.2, as worded.

Article XIV, A.

Article XV, A.1.

Article XVI, B.1 (first sentence).

Article XX, C (second sentence).

Article XXI, B.

The following provisions of the 1987-1989 contract are mandatorily negotiable:

Article X, G to the extent it gives the Association a right to place communications directly in school mail boxes.

Article XIV, B to the extent it can be construed as a non-binding statement of purpose.

Article XV, A.2.

Article XVI, A.3 and B.1 (second sentence).

Article XVII, B.

Article XVIII, B and D.

Article XX, C (first and third sentences).

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
May 14, 1990  
ISSUED: May 15, 1990