

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WINSLOW TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-9

WINSLOW TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of provisions in an expired collective negotiations agreement between the Winslow Township Board of Education and the Winslow Township Education Association. The Commission finds mandatorily negotiable a sick leave bank provision, with the clarification that employees cannot donate days granted by N.J.S.A. 18A:30-2; and a provision that when making transfers and reassignments, length of service be the deciding factor when the superintendent has decided that all other factors are equal. The Commission finds not mandatorily negotiable provisions concerning removal of derogatory material from personnel files; academic freedom; granting extended sick leave, and class size.

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.

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Appearances:

For the Petitioner, Capehart & Schatchard, P.A., attorneys
(Alan Schmoll, of counsel; Kim C. Belin, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Carol H. Alling, on the brief)

DECISION

On July 23, 1999, the Winslow Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that certain provisions in an expired collective negotiations agreement with the Winslow Township Education Association are not mandatorily negotiable.

The parties have filed briefs. These facts appear.

The Association represents all personnel under contract, excluding administrative and supervisory personnel, cafeteria, central office, clerks, lunchroom, attendance officer and substitute caller, substitutes, occupational and physical therapists and community and recreation personnel. After their contract expired on June 30, 1999, the parties began negotiations

for a successor contract. The Association sought to retain several provisions which the Board asserted were not mandatorily negotiable. This petition ensued.^{1/}

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]

We consider only the abstract negotiability of the disputed clauses. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

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.

^{1/} At the parties' request, we held this case in abeyance pending settlement efforts. The parties have since entered a new contract, but the provisions cited in the petition remain in dispute.

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 VII is entitled Unit Member Rights. Paragraph E.2 provides:

All derogatory material in the permanent personnel file shall be removed provided that the unit member verifies correction of that derogatory material has been effected and a minimum period of five years has intervened.

This provision is not mandatorily negotiable. Montgomery Tp., P.E.R.C. No. 99-19, 24 NJPER 452 (¶29209 1998); Moorestown Bd. of Ed., P.E.R.C. No. 94-21, 19 NJPER 455 (¶24215 1993); City of Jersey City, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1983). Employees may negotiate for the opportunity to review their personnel files and request the removal of inappropriate material, and they may also seek a progressive discipline system discounting reliance on stale infractions. Rutgers, the State Univ., P.E.R.C. No. 91-74, 17 NJPER 156 (¶22064 1991). But, as a rule, removal of disciplinary or evaluative information from personnel files is not mandatorily negotiable. The Association asserts that "it is at least arguable" that "derogatory material" could be limited to complaints from parents, newspaper reports, and other material unrelated to disciplinary or evaluative records; but this

provision is not so limited on its face and is not mandatorily negotiable as written.

Article IX is entitled Personal and Academic Freedom.^{2/} Section C provides, in part:

C. The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the Board of Education of Winslow Township and they acknowledge the fundamental need to protect unit members from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their functions. Accordingly, they agree as follows:

* * *

2. The principal and supervisors shall at all times have the right to discuss and suggest to the unit member(s) their concern about any item currently being taught.

The subject of academic freedom centers on educational policy and a school board generally has a right to unilaterally adopt policies on academic freedom. Rutgers, the State Univ., P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991); Hunterdon Central H.S. Dist. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986). Accordingly, C and C.2 are not mandatorily negotiable.

Article XI, Section D provides:

D. Should all accumulated sick leave of a unit member be depleted in any one (1) year, upon the presentation of a medical certificate requesting further sick leave, a leave of absence for a maximum of twenty (20) additional

^{2/} The Association acknowledges that C1 and C2a are not mandatorily negotiable and we need not address them.

consecutive school days shall be granted to any district unit member who has been employed by the Board for at least five (5) full years and such unit member shall be paid at the rate of twenty (20) percent of the daily rate. (For a ten (10) month position, the daily rate shall be one two-hundredth (1/200) of annual salary. For a twelve (12) month position, the daily rate shall be one two-hundred-fortieth (1/240) of annual salary). This provision is to be exercised by the unit member prior to the application to the sick bank.

This provision is not mandatorily negotiable under N.J.S.A.

18A:30-6 and Middlesex Cty. Voc. Bd. of Ed., P.E.R.C. No. 92-2, 17 NJPER 373 (¶22174 1991). Extended sick leave cannot be granted to school board employees on a blanket basis.

Article XI, Section E provides:

E. A Sick Leave Bank has been established to provide compensable leave coverage to bargaining unit members who are absent for an extended period due to catastrophic illness or injury. This Bank shall operate in accordance with the following rules and regulations.

1. A unit member may participate in the Sick Bank if he/she has given written notice of his/her desire to donate a minimum of one sick or personal day during an enrollment period prior to the unit member's request to utilize the Sick Bank. Each year, the enrollment period shall be June 1 to June 30. The contributed sick day(s) will be deducted from the employee's accumulated sick leave days on July 1.

2. Unit member contributions shall be voluntary.

3. The Board shall add one (1) days [sic] to the Sick Bank for every one (1) contributed by the unit members during the initial enrollment period (2-1-91 only).

4. The Sick Leave Bank shall be available only to those unit members who have:

- a) exhausted all of their earned and accumulated leave time (ex. vacation, sick, personal) and,
- b) have applied for 20 additional sick leave days as per Article XI, Section D
- c) have been absent a minimum of sixty (60) consecutive workdays

5. A unit member who is eligible to utilize the Sick Bank must submit a written request to do so to the Superintendent or his designee. The request shall outline nature of the problem and the reason(s) for the requested use of the Bank and shall include medical verification of illness, injury or disability. Verification of continued disability will be required at reasonable intervals. The Board reserves the right to have the unit member examined by medical personnel of its choice.

6. A unit member's use of the Sick Bank shall be subject to the approval of the Board or its designee.

7. A unit member shall be limited to no more than 150 Sick Bank days in a three (3) year period.

8. Sick Leave Bank days cannot be extended automatically from one work year to another. However in the event any unit member using the sick leave bank at the end of the work year is still unable to return to work at the beginning of the next work year, that member must first use all of their new entitlements (sick days, personal days, vacation days, etc.) for that new year, before they are approved to continue sick leave bank use. Maximum number of days limit still applies.

Sick leave banks are mandatorily negotiable provided their provisions do not contravene the school laws.

State-Operated School Dist. of City of Newark, P.E.R.C. No. 2000-51, 26 NJPER 66 (¶31024 1999). To be consistent with N.J.S.A. 18A:30-6, a sick leave bank must preserve a school board's right to grant or deny extended sick leave case-by-case. See State-Operated Sch. Dist. of Newark, P.E.R.C. No. 99-25, 24 NJPER 479 (¶29223 1998); Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986). The parties' sick leave program meets that requirement since it conditions use of the bank on the approval of the Board or its designee and does not provide for arbitral review of denials. To be consistent with N.J.S.A. 18A:30-2, a sick leave bank must not include the ten annual sick leave days granted by that law. Those days are reserved for personal use by the employee receiving that statutory benefit. In re Hackensack Bd. of Ed., 184 N.J. Super. 311 (App. Div. 1982). The parties' sick leave program does not expressly include these statutory sick leave days and the program could be administered consistently with N.J.S.A. 18A:30-2 by clarifying that employees cannot donate days granted by that statute. The Board makes no other arguments about the education laws so, with this one clarification, we hold that Article XI, Section E is mandatorily negotiable.

Article XVIII is entitled Assignments and Transfers.

Section C covers involuntary transfers and reassignments.

Subsection 1. provides:

When all other factors are equal (as determined by the superintendent) length of service shall be the deciding factor.

The Board asserts that this provision significantly interferes with its prerogative under Ridgefield Park to decide the criteria for transferring employees. It relies on Milltown Bd. of Ed., P.E.R.C. No. 97-66, 23 NJPER 28 (¶28020 1996) and West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-133, 23 NJPER 436 (¶28199 1997). The Association argues that the clauses in these cases specified the criteria, but this clause is different because the employer alone determines and applies the criteria and seniority comes in to play only after the superintendent has determined that all other factors are equal. It relies on State of New Jersey (Dept. of Human Services), P.E.R.C. No. 94-108, 20 NJPER 234 (¶25116 1994), aff'd 21 NJPER 262 (¶26165 1995); Willingboro Bd. of Ed., P.E.R.C. No. 92-48, 17 NJPER 497 (¶22243 1991); Easthampton Tp. Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983); Willingboro Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13042 1982). We agree with the Association that the cases relied upon by the Board are distinguishable. Given the arguments presented, we hold that this clause does not significantly interfere with the Board's prerogative to select and apply transfer criteria.

Article XXII is entitled Class Size. It provides:

It is recognized by the Board that pupil-teacher ratio is an important aspect of an effective educational program. The Board agrees to continue its effort to keep class sizes at an acceptable number as dictated by the financial condition of the district, the building facilities available, the availability of qualified teachers and the best interests of the district as deemed administratively feasible.

This provision is not mandatorily negotiable under Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 95-15, 20 NJPER 334 (¶25175 1994) and Willingboro Bd. of Ed., P.E.R.C. No. 92-48, 17 NJPER 497 (¶22243 1991). The subject of class size centers on educational policy and is not mandatorily negotiable.

ORDER

The following provisions are not mandatorily negotiable:

Article VII, Paragraph E.2

Article IX, Paragraphs C and C.2

Article XI, Section D


Article XXII

The following provisions are mandatorily negotiable:

Article XI, Section E

Article XVIII, Section C

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000