

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ADMINISTRATIVE EMPLOYEES  
ASSOCIATION,

Petitioner,

Docket No. SN-80-32

-and-

NEWARK BOARD OF EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission addresses three issues. First, the Commission concludes that a proposal that shop stewards receive ten days prior notice before being transferred is a required subject for negotiations. This result is predicated on the requirement that the provision serves a valid and proper objective of the union relating to the enforcement and administration of its contract. The second issue relates to scheduling of vacations. It does not appear to be disputed that vacations and scheduling of vacations are mandatorily negotiable. However, a proposal which would prevent an employer from changing a vacation in an emergency situation is an illegal subject of negotiations because it unduly restricts the ability of the Board to meet its overriding responsibilities. Third, the Commission finds that a proposal which requires notice of any impending disciplinary proceeding is procedural and not in conflict with existing Civil Service rules and regulations and does not affect the ability of the Board to discipline employees. Accordingly, the notice of discipline provision is a mandatory subject for negotiations.

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Appearances:

For the Petitioner, Barry A. Aisenstock, Esq.

For the Respondent, Cecil J. Banks, General Counsel  
(Mr. Marvin M. Wyche, of Counsel)

DECISION AND ORDER

On October 29, 1979 a Petition for Scope of Negotiations Determination was jointly filed with the Public Employment Relations Commission by the Newark Board of Education (the "Board") and the Administrative Employees Association (the "AEA"). Both parties filed briefs, the last of which was received on December 6, 1979. This dispute arose during recent contract negotiations. Although the parties agreed to sign a contract, they also agreed that enforcement of three disputed provisions of that contract would await this negotiability determination by the Commission. Those three provisions will be considered seriatim.

The first provision is Article VI, Section 1 which reads:

While serving as a Steward, an employee will not be transferred to another location without ten (10) working days prior notice to the AEA and subject to grievance procedures.

The Board argues that the transfer of public school employees is a management prerogative. As such, the Board contends that the contractual provision is non-negotiable, citing Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), and is not arbitrable, citing In re Maywood Board of Education, 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. den. 81 N.J. 292 (1979).

The AEA concedes that transfer is a management prerogative, but contends that that is not the issue here. The issue is a form of union security. The AEA points out that the steward performs numerous important tasks for AEA members. Notice of the transfer of a steward will enable the AEA to replace and train a new steward to insure the continuity of representation.

The Commission finds that this dispute involves a notice of transfer provision affecting a union steward and not the abstract decision of the Board to transfer employees. The Commission, in In re State of New Jersey, P.E.R.C. No. 78-50, 4 NJPER 113 (¶4053 1978), following the NLRB's rationale in Dairylea Cooperative Inc., 89 LRRM 1737, enf'd sub nom NLRB v. IBT, Local 338, \_\_\_ F.2d \_\_\_, 91 LRRM 2929 (2nd Cir, 1976), adopted the position that a "super seniority" provision in a contract related to a mandatory subject for collective negotiations as applied to a reassignment which was found to be equivalent to a layoff. The Commission concurred with the Hearing Examiner's

conclusion that such an article served a valid and proper union objective, namely, the effective enforcement and administration of a collective negotiations agreement on a statewide basis.<sup>1/</sup> The instant provision likewise relates to the interests of an employee organization in the representation of its members and as such is mandatorily negotiable.<sup>2/</sup>

As to the issue of whether a dispute arising under this provision may be subject to the grievance procedure, the Commission relies on the Supreme Court decision in Township of West Windsor v. PERC, 78 N.J. 98 (1978):

...the scope of mandatory grievability is substantially equivalent to the scope of mandatory negotiability. 78 N.J. at 115-116.

Based upon our finding that the disputed clause is mandatorily negotiable, it may be subject to the grievance procedure if the parties so agree.

The second contested provision, Article XV, Section 1, reads:

No employee will be required to reschedule his vacation period once it has been officially authorized except for a case of clear and obvious emergency as determined by the appropriate director and with the consent of the employee, after notification to the employee and the AEA.

<sup>1/</sup> See also In re Haddonfield Board of Education, P.E.R.C. No. 80-53, 5 NJPER \_\_\_\_ (¶ 1979).

<sup>2/</sup> It may be noted that the instant clause is less restrictive of an employer's prerogative than the clause at issue in the aforementioned State of New Jersey case which specifically stated that shop stewards would not be reassigned involuntarily. The instant clause simply requires the Board to give the Association 10 days notice before effectuating a transfer.

The Board contends that this provision infringes upon the ability of the Board to respond to an emergency because the consent of the employee is necessary before a vacation may be rescheduled. The Board avers that this restriction on the Board is non-negotiable. The AEA argues that vacation and vacation scheduling are terms and conditions of employment and hence are negotiable.

The Commission agrees that vacations and scheduling of vacations are mandatorily negotiable. Neither party appears to argue contrary to this holding. The dispute as framed by the Board is whether the consent of the employee to a change in a scheduled vacation is necessary when the change is dictated by an emergency. In In re Byram Twp. Board of Education, *supra*, a similar situation arose when a proposal during contract negotiations sought the deletion of a provision compelling teachers to supervise students during an emergency. Absent an emergency, teachers would have a duty free lunch period. The court found that a board of education could not relinquish its right and duty to assign teachers in emergency situations despite the resulting infringement upon a term and condition of employment, in that case a contractual duty free period.

This same analysis must be applied in the instant matter. A board of education must be able to respond to an emergency situation without consultation or negotiation with the

majority representative. A board of education is charged with the safety and well-being of students, and may not negotiate and reach a result which will abdicate this responsibility. A contract proposal which seeks to encumber the ability of a board of education to react to an emergency situation must be and is an illegal subject of negotiation.<sup>3/</sup>

The third disputed provision, Article XXI, Section 2, reads:

Except in the case of an action of violence, criminal intent or bodily harm, an employee shall not receive any disciplinary action unless:

1. Verbal warning is advanced
2. A notice of warning is sent, at the same time, to the AEA office.

Citing State v. State Supervisory Employees Assn, supra, the Board contends that negotiations are preempted by certain Civil Service regulations. Specifically, the Board relies on N.J.A.C. 4:1-16.4(a) and N.J.A.C. 4:1-16.7. The Board claims that these regulations provide a maximum level of rights for employees.

The AEA asserts that since discipline is a term and condition of employment <sup>4/</sup> and since no Civil Service regulation preempts negotiations, this clause is a mandatory subject for negotiations. The AEA claims that nothing in this clause prevents

<sup>3/</sup> In re Camden Administrators Council, Local 39, AFSA, AFL-CIO P.E.R.C. No. 80-3, 5 NJPER 286 (¶10157 1979).

<sup>4/</sup> It cites Township of West Windsor v. PERC, supra., for this principle.

the Board from processing a disciplinary matter before the Civil Service Commission. It is argued that the clause is procedural in nature because the AEA is seeking notice of any impending disciplinary proceedings.

In In re State of New Jersey and Local 195, IFPTE and Local 518, SEIU, P.E.R.C. No. 80-7, 5 NJPER 299 (¶10161, 1979), the Commission held that "...parties may negotiate concerning minor disciplinary matters so long as such negotiations do not contravene pertinent Civil Service Laws and Regulations." 5 NJPER at 300-301.

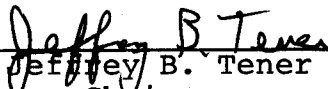
After reviewing the Civil Service Laws and Regulations on the one hand and the proposed provisions on the other, we find no conflict between the two. N.J.A.C. 4:1-16.7 relates to the right and authority of an employer to impose discipline and relates to a method for resolving disputes concerning discipline. N.J.A.C. 4:1-16.4 concerns notice in layoff or demotion situations. The disputed clause simply provides for notice of possible disciplinary actions in cases not involving acts of violence, criminal intent or bodily harm. The ability of the Board to discipline under the Civil Service Laws and Regulations is unaffected. We find that this matter falls within our holding in the Local 195, IFPTE and Local 518, SEIU matter and is fully consonant with the Supreme Court's holding in State v. State Supervisory Employees Assn, supra.

ORDER

Accordingly, for the reasons cited herein, the Commission finds the notice of transfer to union steward in Article VI, Section 1 and the notice of discipline in Article XXI, Section 2, to be mandatory subjects for negotiations and finds the emergency rescheduling of vacations in Article XV, Section 1 to be an illegal subject for negotiations. The parties, having included these clauses in their agreement subject to this determination, are hereby ORDERED to give effect to the two former notice provisions and to refrain from enforcing that latter provision regarding the rescheduling of vacations.

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BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett, Parcels, Graves and Hipp voted for this decision. Commissioner Newbaker abstained. None opposed.

DATED: January 17, 1980  
Trenton, New Jersey

ISSUED: January 18, 1980