

P.E.R.C. NO. 90-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-89-243

NEPTUNE TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Neptune Township Board of Education violated the New Jersey Employer-Employee Relations Act by postponing the transfer of payroll deductions to credit union and annuity plan accounts of employees represented by the Neptune Township Education Association.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-89-243

NEPTUNE TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Patterson and Hundley
(James T. Hundley, of counsel)

For the Charging Party, Klausner, Hunter and Oxfeld
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On February 23, 1989, the Neptune Township Education Association filed an unfair practice charge against the Neptune Township Board of Education. The charge alleges that the Board violated subsections 5.4 (a)(1) and (5)^{1/} of the New Jersey

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally implemented a new payroll system changing the way voluntary salary deductions were credited to credit union and tax sheltered annuity plans.

On April 5, 1989, a Complaint and Notice of Hearing issued. After conferring with the assigned Hearing Examiner, the parties agreed to waive a Hearing Examiner's report and to submit a stipulated record to the Commission. N.J.A.C. 19:14-6.7.

The parties filed stipulations by August 14, 1989. Briefs were filed by August 23, 1989.

Following are the verbatim:

STIPULATED FACTS

1. The Neptune Township Education Association (hereinafter the "Association") is the exclusive negotiations representative, as defined in Chapter 303, Public Laws of 1968, State of New Jersey, as amended by Chapter 123 of Public Laws of 1974, for all non-supervisory certified teaching personnel employed within the Neptune Township School District and for supportive staff employed within the following job classifications: Secretary, Education Aide, Internal Attendance Officer and Van Driver.
2. The Neptune Township Board of Education (hereinafter the "Board") is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to the Act's provisions.
3. The Board of Education and the Association are parties to a collective negotiations agreement covering the period between July 1, 1988 and June 30, 1991.
4. Beginning in January, 1989, the Board instituted a new payroll system with the Asbury Park Board of Education.

5. Article VIII(D) of the Negotiated Agreement between the parties states:
 - 1) Teachers employed on a twelve (12) month basis shall be paid in twenty-four (24) semi-monthly installments.
 - 2) Teachers employed on a ten (10) month basis shall be paid in twenty (20) semi-monthly installments.
6. By way of example under the previous payroll system an employee with a monthly net salary of \$2,000.00 would receive a \$1,000.00 salary check on the 15th day of the month and a second \$1,000.00 salary check on the last day of the month. If such employee authorized the Board to deduct \$200.00 a month from his or her net salary under the Credit Union Deduction Plan as authorized in Article XVIII(B) of the Negotiated Agreement, the employee would receive a \$900.00 salary check on the 15th day of the month and a second \$900.00 salary check on the last day of each month. However, the entire \$200.00 Credit Union Deduction would be forwarded to the credit union on the 15th day of the month.
7. This prior payroll system was in effect for at least 20 years within the Neptune Township School District.
8. By way of example under the present payroll system an employee with a \$2,000.00 net monthly income who authorizes a \$200.00 monthly credit union deduction will receive \$900.00 salary checks on the 15th day and last day of each month. However, the employee's credit union account would now be credited with \$100.00 on the 15th day of the month and 100.00 on the last day of the month.
9. The present payroll system would affect voluntary payroll deductions for various tax sheltered annuity programs in the same manner and method it would affect the credit union deductions as set forth above.
10. It is further stipulated that the parties have resolved the additional labor relations disputes referenced in paragraphs 9 and 10 of the Unfair Practice Charges filed by the Neptune Township Education Association.

11. The parties stipulate to waive a Hearing and Hearing Examiner's Recommended Report and Decision and they wish to send the matters directly before the Commission.
12. In so stipulating the parties recognize that the facts as stipulated constitute the complete record to be submitted to the Commission. The Charging Party is placed on notice that to the extent that the stipulated facts are sufficient to sustain charging party's burden of proof by a preponderance of the evidence, the complaint may be dismissed by the Commission. Similarly, the Respondent recognizes that it too must rely upon the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted or to rebut or disprove the existence of a prima facie case established by the Charging Party.

ANALYSIS

An employer violates subsections 5.4(a)(1) and (5) when it changes a mandatorily negotiable term and condition of employment without negotiations. 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 403-404]

The Board argues that it was not obligated to negotiate before implementing the new payroll system because: 1) the change does not intimately and directly affect employees, and 2) negotiations are preempted by N.J.S.A. 18A:27-6 and 18A:66-127. The Board does not claim that negotiations would interfere with the determination of governmental policy.

The timing of salary payments is mandatorily negotiable. Bor. of River Edge, P.E.R.C. No. 89-44, 14 NJPER 684 (¶19289 1988); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); Lawrence Tp. Bd. of Ed., P.E.R.C. No. 81-69, 7 NJPER 13 (¶12005 1980); City of Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (¶10280 1979), aff'd App. Div. Dkt. No. A-1318-79 (2/10/81); Garfield Bd. of Ed., P.E.R.C. No. 80-67, 5 NJPER 542 (¶10279 1979); College of Medicine & Dentistry, P.E.R.C. No. 77-35, 3 NJPER 70 (1977). Here, the Board postponed the transfer of funds to credit union and annuity accounts. Such a change intimately and directly affects employees because it deprives them of interest during the delay.^{2/}

State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978), held that negotiations over otherwise mandatorily negotiable

^{2/} Old Bridge Tp., P.E.R.C. No. 89-23, 14 NJPER 576 (¶19243 1988) is distinguishable. After a new payroll system was implemented, employees holding both a regular and an extracurricular position received one paycheck covering both positions rather than two paychecks. The date, method and amount of payment were not changed. The change did not intimately and directly affect employees and therefore no terms and conditions of employment were involved.

terms and conditions of employment are not preempted unless a statute or regulation specifically sets the terms and conditions of employment, leaving nothing to the public employer's discretion. See also Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed. Ass'n., 91 N.J. 38 (1982). The Board first relies on N.J.S.A. 18A:27-6 in making its preemption claim. That statute provides:

Each such contract shall specify:

1. The date when the person shall begin such employment;
2. The kind and grade of certificate held by him and the date upon which the certificate will expire;
3. The salary at which he is employed, which shall be payable in equal semimonthly or monthly installments, as the board shall determine, not later than five days after the first and the fifteenth day of each month in case of semimonthly installments and not later than five days after the close of the month in the case of monthly installments while the school is in session, a month being construed, unless otherwise specified in the contract, to be 20 school days or four weeks of five school days each; and
4. Such other matters as may be necessary to a full and complete understanding of the contract.

This statute does not preempt negotiations over pay dates. Ewing Tp. Bd. of Ed., P.E.R.C. No. 81-85, 7 NJPER 89 (¶12035 1981). In Ewing we stated:

[The statute] does not appear to be the type intended to remove discretion, but rather specifically provides for it. As such, it would not be the type which preempts negotiations under the State Supervisory Employees Association discussion.

This statute like many others in the Education Law was enacted well before the New Jersey Employer-Employee Relations Act which authorized public employees to negotiate their working conditions with their employers. It, like these others, appears to establish certain minimal protections for teachers and other education employees.... [T]hese statutes which permit discretion in the individual employment contract should be read in pari materia with the negotiations obligations established by the Act. [Id. at 90; footnotes omitted]

Changing the date payroll deductions are credited to employees' accounts is akin to changing pay dates. N.J.S.A. 18A:27-6 speaks no more specifically about deductions than it does about pay dates. Accordingly, it does not preempt negotiations.

The Board also relies on N.J.S.A. 18A:66-127. It provides, in part:

Any board of education may enter into an agreement with any of its employees whereby the employee agrees to take a reduction in salary with respect to amounts earned after the effective date of such agreement in return for the board's agreement to use a corresponding amount to purchase for the employee an annuity as defined by N.J.S. 17B:17-5, from any company authorized to sell such annuities under the provisions of Title 17B of the New Jersey Statutes, or to invest in a custodial account for the employee through a broker-dealer or agent registered pursuant to the provisions of sections 9 and 10 of the 'Uniform Securities Law (1967)', P.L. 1967, c.93 (c 49:3-56 and c 49:3-57).

Like N.J.S.A. 18A:27-6, this statute does not speak in the imperative. Rather, it permits discretion in entering into such an annuity agreement and sets only minimal procedural guidelines. That the amounts to be deducted must be "earned" after the effective date of the agreement suggests only that if an agreement is entered into,

it must be applied prospectively. This statute does not preempt negotiations over the date payroll deductions are forwarded to employees' accounts.

Accordingly, we find that the Board violated subsections 5.4(a)(1) and (5) when it unilaterally changed a mandatorily negotiable term and condition of employment.

ORDER

The Neptune Township Board of Education is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the act, particularly by postponing the transfer of payroll deductions to credit union and annuity plan accounts of employees represented by the Neptune Township Education Association.

2. Refusing to negotiate in good faith with the Neptune Township Education Association, particularly by postponing the transfer of payroll deductions to credit union and annuity plan accounts of employees represented by the Association.

B. Take the following affirmative action:

1. Return the timing of the credit union and tax sheltered annuity transfers of employees represented by the Neptune Township Education Association to the method in effect prior to the January 1989 change.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix

"A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
December 14, 1989
ISSUED: December 15, 1989

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by postponing the transfer of payroll deductions to credit union and annuity plan accounts of employees represented by the Neptune Township Education Association.

WE WILL NOT refuse to negotiate in good faith with the Neptune Township Education Association, particularly by postponing the transfer of payroll deductions to credit union and annuity plan accounts of employees represented by the Association.

WE WILL return the timing of the credit union and tax sheltered annuity transfers of employees represented by the Neptune Township Education Association to the method in effect prior to the January 1989 change.

Docket No. CO-H-89-243

Neptune Tp. Bd. of Ed.

(Public Employer)

Dated: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"