

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PINE HILL BOARD OF EDUCATION,

Petitioner,

Docket No. SN-79-60

-and-

PINE HILL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission concludes that smoking in areas reserved for teachers is a required subject for collective negotiations. The Commission cited In re Byram Township Board of Education, 152 N.J. Super. 12 (App. Div. 1977) wherein the court held that physical facilities and conveniences provided in teachers' lounges were mandatorily negotiable.

The Commission also noted that negotiations on this subject were not preempted by any specific fire code regulations, citing the Supreme Court decision in State Supervisory Employees Association, 78 N.J. 54 (1978).

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Appearances:

For the Petitioner, Anthony R. Sorce,  
Superintendent, Pine Hill Board of Education

For the Respondent, Joel S. Selikoff, Esq.

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on January 19, 1979 by the Pine Hill Board of Education (the "Board") seeking a determination as to whether certain matters in dispute between the Board and the Pine Hill Education Association (the "Association") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

The dispute arose when, on October 4, 1978, the Board adopted a policy prohibiting smoking in all school buildings. Previously, the Board's policy on professional conduct of its employees permitted smoking only in teachers' lounges and facilities of the Board's two public schools.

The Association filed a grievance alleging that the Board violated the collective negotiations agreement between the parties when it instituted the no smoking policy. On January 11, 1979 the Association filed a Demand for Arbitration to the American Arbitration Association. The Association sought to arbitrate the "Institution of a no-smoking requirement by the Board of Education." The Board seeks a permanent restraint of this arbitration. The Association agreed to voluntarily stay the arbitration pending a final decision on the Scope of Negotiations Petition.

The Board filed a letter memorandum in lieu of brief on February 5, 1979 and the Association filed its brief on February 26, 1979.

The Board's position is that local building and fire codes as well as state regulations governing schools prohibit smoking in schools.

The Association's position is that smoking in physical facilities reserved for teachers is a term and condition of employment and that the Board unilaterally changed that term and condition of employment in violation of a past practices clause contained in the parties' collective negotiations agreement.

The Association notes that the issue in dispute does not interfere with the Board's responsibility to determine major educational policy as defined in Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973), but is a

mandatorily negotiable term and condition of employment as set out in In re Byram Township Board of Education, 152 N.J. Super. 12 (App. Div. 1977). The Court in Byram determined that physical facilities and conveniences provided in the teachers' lounges were mandatorily negotiable.

The Association also notes that the section of the administrative code cited by the Board <sup>1/</sup> as a regulation prohibiting negotiations in this area pursuant to the Supreme Court's decision in State v. State Supervisory Employees Association, 78 N.J. 54 (1978), is inapplicable because it applies only to private schools.

Furthermore, the Association notes that the Pine Hill Borough fire codes cited by the Board are not specific statutes or regulations prohibiting negotiations in this area as defined in the State Supervisory Employees case.

After careful consideration of the parties' submissions, we conclude that the issue in dispute is limited to smoking in physical facilities reserved for teachers and that it is a required subject for collective negotiations.<sup>2/</sup>

In In re Byram Township Board of Education, supra, the Appellate Division found certain types of facilities for the convenience of teachers to be terms and conditions of employment.

<sup>1/</sup> N.J.A.C. 6:24-1.1 et seq. Certification of Private Elementary and Secondary Boarding Schools.

<sup>2/</sup> See Ridgefield Park Education Assn v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) wherein the Supreme Court defined required subjects as those intimately and directly affecting the work and welfare of public employees, which decision affirmed the standards set out in Dunellen, supra.

Relying on the standard set out in Dunellen the Court held an appropriately furnished faculty lounge to be a term and condition of employment. We agree with the Association, that if such items as a full length mirror or a shelf for the convenience of teachers are mandatory subjects of bargaining, then the issue of smoking in the teachers' facilities, i.e. use of facilities, is equally negotiable. It should be noted that the issue is limited to the negotiability of smoking in areas reserved for teachers and the Board's regulation of smoking in areas other than those is not challenged. As the Court said in Byram at p. 29:

Apart from limitations respecting capital expenditures, if the subject matter otherwise intimately and directly affects the work and welfare of teachers and will not significantly interfere with management's educational responsibilities, the Board should be required to negotiate it....

The Board in its submission expresses concern for non-smokers. That concern, while commendable, does not affect the negotiability of this issue. It is the Association's contention that this matter, which we have found to be a mandatorily negotiable term and condition of employment, is presently governed by the contractual past practice clause. To the extent that this matter is governed by the past practice clause, the parties may agree to modify that provision.

We also agree with the Association that negotiations are not precluded on this subject because of Borough fire codes on the subject. The test for determining whether the adoption of a specific statute or regulation sets a term and condition of employment, thereby preempting negotiation, depends on whether the statute or

regulation "speak[s] in the imperative\*\*\*[or] permit[s] a public employer to exercise a certain measure of discretion." State v. State Supervisory Employees Association, supra. at 81.

The pertinent fire code is:

F-310.2 Prohibited areas: Smoking shall be prohibited where conditions are such as to make smoking a hazard including areas of piers, wharves, warehouses, stores, industrial plants, institutions, schools, places of assembly and in spaces where combustible materials are stored or handled. The fire official shall designate specific safe locations, if necessary, in any building, structure or place in which smoking may be permitted.

We do not believe that the above precludes negotiations concerning smoking in physical facilities set aside for teachers. No facts have even been suggested by the Board which indicates that the alleged change in policy was implemented to alleviate a legitimate fire hazard.<sup>3/</sup>

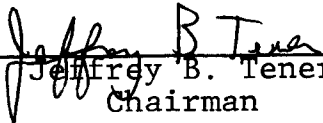
#### ORDER

Based on the above discussion, IT IS HEREBY ORDERED that the request of the Pine Hill Board of Education for a permanent restraint of arbitration is denied. Pursuant to N.J.S.A.

<sup>3/</sup> Our holding that a restraint of arbitration is not appropriate is premised on our finding that a smoking policy for areas reserved for teachers is a mandatorily negotiable term and condition of employment and in our further finding that neither the administrative code provision nor the local fire code prohibits negotiations or arbitration of this matter.

34:13A-5.4(d), the Commission hereby determines that the matter in dispute, smoking in areas reserved for teachers, is a required subject for collective negotiations and is arbitrable if otherwise arbitrable under the parties' agreement.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

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

DATED: Trenton, New Jersey  
April 26, 1979  
ISSUED: April 27, 1979