P.E.R.C. NO. 84-157

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLACK HORSE PIKE REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-84-75

BLACK HORSE PIKE EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance the Black Horse Pike Education Association filed against the Black Horse Pike Regional Board of Education. The grievance had alleged that the Board violated its collective negotiations agreement with the Association when it compelled a teacher to work two make-up days after he exercised his statutory right not to work on the legal state holidays of Columbus Day and Washington's birthday. The grievant sought additional compensation for working these two days.

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Appearances
For the Petitioner, Wade and Friedman, P.A.
(John D. Wade, of Counsel; Jean Blanken Ramsay, on the Brief)

For the Respondent, Paul J. Leahy, Field Representative, New Jersey Education Association

DECISION AND ORDER

On March 20, 1984, the Black Horse Pike Regional Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a grievance which the Black Horse Pike Education Association ("Association") has filed against it. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it compelled a teacher to work two make-up days after he had exercised his statutory right not to work on the legal state holidays of October 11, 1982 and February 21, 1983.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's non-supervisory certified personnel. The Board and the Association entered a collective negotiations agreement effective between July 1, 1981 and June 30, 1983. The contract contains a grievance procedure culminating in binding arbitration. Article XVI, entitled School Calendar, provides:

> A. ASSOCIATION INPUT
>
> Before adoption of the school calendar, the Board will consider the suggestions of the Association concerning vacations and holidays. The Board reserves the right to make final decision with respect to the school calendar. Association suggestions should be submitted to the Superintendent by February 1, of the prior school year.
>
> B. WORK YEAR
>
> The Board hereby agrees that the teacher work year shall be limited to:
>
> 1. all days when pupils are in attendance
> 2. two days for attendance at the New Jersey Education Association Convention
> 3. four additional days for orientation, closing, and in-service training
> 4. an in-service day for teachers new to the District may be scheduled on or after September 1, of each school year.
>
> C. MAXIMUM NUMBER OF DAYS
>
> For the term of the Agreement, the total number of days will not exceed 186 for teachers with prior experience in the District.

For the 1982-83 school year, the Board scheduled two days of in-service training for its staff on October 11, 1982 and February 21, 1983. These two days were legal state holidays

pursuant to N.J.S.A. 18A:25-3 and classes were not scheduled. Stanley Horton, an Industrial Arts teacher, notified the Board by telephone that he would not attend the two in-service days because they were legal state holidays. On March 8, 1983, the Board's superintendent directed Horton to make up the two in-service days on June 22 and 23, 1983, immediately following the last school day.

On April 14, 1983, the Association filed a grievance challenging this directive. The grievance asserts that Horton did not receive his contractually guaranteed right to due process before the directive issued; that he had properly exercised his right not to work on public holidays; and that the superintendent's letter impermissibly referred to the employee's past participation in protected Association activities. Horton's immediate supervisor could not resolve this grievance so it was forwarded to the building principal. He denied the grievance because he believed the Board had a contractual right to require Horton to make up the in-service days.

The grievance was then forwarded to the superintendent who also denied it. In his response, the superintendent asserted that the Board had not violated Horton's contractual right to timely notice; that Horton could be required to make up the two days because he had not followed contractual procedures for obtaining a paid temporary leave of absence; that Horton was not contractually entitled to count attendance at a Sunday workshop and an NJEA convention as his two in-service days; and

that the Board had a managerial prerogative to set the school calendar.[1/]

The Association then presented the grievance to the Board. It reasserted its belief that Horton's attendance at a Sunday workshop and an NJEA convention satisfied his contractual obligation to work the two in-service days and that he had not been given proper notice of the penalties involved for invoking his statutory right to not work on legal state holidays. On June 20, 1983, the Board denied the grievance for the reasons the superintendent gave.

Horton worked the two scheduled make-up days. On June 30, 1983, the Association filed a demand for binding arbitration. The demand asserted that the Board violated its agreement when it scheduled the two make up days and sought, in part, compensation at a rate of 1/200 of Horton's annual salary for each of the two days worked. The instant petition ensued.

In its brief, the Board asserts that N.J.S.A. 18A:25.3 does not preclude the rescheduling of work days for teachers who exercise their conceded statutory right to not work on public holidays. It further asserts that it has a non-negotiable prerogative to structure the school calendar.

1/ The superintendent also stated that his March 8, 1983 letter had been revised to delete any reference to Horton's role in the protected activity of negotiating the agreement.

In its brief, the Association asserts that the dispute predominantly involves the mandatorily negotiable subject of the number of work days an employee must work each year.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Thus, in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), stated:

> 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.

Thus, in the instant case, we do not consider the merits of the Association's contractual claims or the Board's contractual defenses. Instead, we focus on the abstract question of the negotiability of the Association's claim that the Board is contractually required to pay Horton for working on the re-scheduled in-service days.2/

2/ Because Horton actually worked the two rescheduled in-service days, we will focus on the negotiability of his compensation claim and not the negotiability of the determination to require him to attend these sessions. Also, given the removal of the allegedly offensive language concerning Horton's role in negotiations from the March 8, 1983 letter, we will not consider the negotiability of the Association's claim, presented in its initial grievance, that this language violated Horton's statutory and contractual rights.

In IFPTE Local 195 v. State, 88 N.J. 393 (1982), the Supreme Court set forth the tests for determining whether a subject is mandatorily negotiable and arbitrable. The Court stated:

> ...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 pp. 404-405.

Applying these tests in the instant case, we believe that the instant dispute predominantly involves the mandatorily negotiable and arbitrable subjects of entitlement to holidays and the relationship between compensation and number of days worked.

Because Horton's rights under N.J.S.A. 18A:25-3 triggered the instant dispute, we first consider whether that statute preempts negotiation or arbitration over compensation for the rescheduled in-service days. We conclude it does not.

N.J.S.A. 18A:25-3 provides:

> No teaching staff member shall be required to perform his duties on any day declared by law to be a public holiday and no deduction shall be made from such member's salary by reason of the fact that such a public holiday happens to be a school day and any term of any contract made with any such member which is in violation of this section shall be void.

N.J.S.A. 36:1-1, in turn, declares Columbus Day and Washington's Birthday to be public holidays. There is no dispute that the Board could not have required Horton to attend the in-service sessions scheduled on these public holidays in 1982 and 1983 and could not automatically dock his salary for not attending. There also does not appear to be any dispute that N.J.S.A. 18A:25-3 neither specifically bars nor requires the rescheduling of work days without additional compensation for individual employees who elected not to work on legal holidays. Dohm v. Bd. of Ed. of the Township of West Milford, Commissioner of Education #5-83, Agency Dkt. No. 137-5/82A (November 18, 1982) ("Dohm").[3/] Thus, the Board has statutory discretion over whether or not to reschedule work days falling on public holidays and over whether or not to compensate employees required to work on rescheduled days. See State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978).

Applying Local 195's other two tests, we conclude that compensation for the rescheduled in-service days is a mandatorily negotiable subject. In Bd. of Ed. of Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980), the Supreme Court stated:

> Where the condition of employment is significantly tied to the relationship of the annual rate of pay to the number of days worked, then negotiation would be proper even though the cost may have a significant effect on a managerial decision to keep the schools open more than 180 days.

3/ Dohm also establishes that N.J.S.A. 18A:25-3 does not require the closing of schools on public holidays, and instead only requires that teachers not be compelled to work on those days.

That is the case here: the Association is claiming that Horton had to work two extra days and should receive two extra days pay. Further, as in Woodstown-Pilesgrove, we do not believe that this limited claim to compensation significantly interferes with the Board's managerial prerogative to establish the school calendar. The two rescheduled in-service days in question did not involve the presence of students or implicate the overall structure of the school calendar. See Burlington County College Faculty Ass'n v. Burlington County College Board of Trustees, 64 N.J. 10, 12 (1973) (days and hours of work of individual teachers are mandatorily negotiable within overall structure of school calendar); In re Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-50, 9 NJPER 670 (¶14282 1983) (date of professional day is mandatorily negotiable); In re Carteret Bd. of Ed., P.E.R.C. No. 80-30, 5 NJPER 397 (¶10205 1979), aff'd App. Div. Docket No. A-419-79 (11/10/80) (compensation for after-school teacher workshop is mandatorily negotiable).[4/] See also In re Township of West Orange, P.E.R.C.

4/ We disagree with Dohm and Freehold Regional High School Ed. Ass'n v. Bd. of Ed. of Freehold Regional High School Dist., Commissioner of Education #_____, 1977 S.L.D. 1057 (197_) to the extent they find that a board of education has a non-negotiable managerial prerogative in all instances to reject claims for extra compensation after work days falling on legal public holidays have been rescheduled. Nothing in this opinion, however, should be read as disapproving the finding of those cases, based on analyses of the collective negotiations agreements in question, that the boards had a contractual right to reschedule the missed work days without paying additional compensation. Had we jurisdiction to consider the contractual merits, we might well agree with the Commissioner's contractual interpretation in those cases. There is no dispute in the instant case that the Board has a contractual right to schedule no more than 186 work days and that the assignment of the two in-service days was a day for day replacement for the two state holidays which the grievant did not work.

No. 84-141, 10 NJPER ___ (¶_____ 1984) (employee entitled to leave of absence to attend national guard drill; whether work-time missed is rescheduled is negotiable). Accordingly, we will decline to restrain arbitration over Horton's claim for additional compensation for the rescheduled in-service days.

ORDER

The Board's request for a restraint of binding arbitration is declined.

BY ORDER OF THE COMMISSION

James W. Mastraini
Chairman

Chairman Mastriani, Commissioners Graves, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Butch was not present.

DATED: Trenton, New Jersey
June 25, 1984
ISSUED: June 26, 1984