

DORCHESTER EDUCATORS, ET AL.,

Appellants

v.

DORCHESTER COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 03-35

OPINION

The issue in this appeal is whether the local board illegally failed to negotiate with the Dorchester Educators, et al. concerning the scheduling of three work days for guidance counselors beyond the regular school year for students and other 10-month employees.¹ The union maintains that the scheduling of the three work days is a working condition and therefore is subject to negotiation. The local board asserts that the scheduling of the three work days is part of the determination of the school calendar for which negotiation is precluded by statute.

BACKGROUND

In the Dorchester County Public School System the development of the school calendar is a process that begins with a calendar committee designated by the superintendent and comprised of the human resources manager, a school administrator, the transportation manager, parents, professional staff, and a representative of the Dorchester Educators. In the matter under review, the union representative was the president, Sylvia Barrios. *See* Tr. at 59.²

The calendar committee met three times between October and November, 2002, to develop recommendations for the 2003-04 school calendar to present to the local board. Committee members brought different concerns to the discussion such as the desired length of school vacations. Superintendent Reilly submitted proposals that addressed various educational issues, such as maximizing the number of instructional days before testing, inclusion of professional development days, and providing coverage to answer questions asked by students and parents at the conclusion of the school year for students.

With regard to the latter, Superintendent Reilly determined that the best way to meet the needs of parents and students was to have guidance counselors available at the conclusion of the student school year to answer the sorts of questions that typically arise when school finishes for the students. As the superintendent explained:

¹The guidance counselors were given three days off during the school year so that all 10-month employees worked the same number of days in total.

²Tr. references the transcript of the local board hearing on May 8, 2003.

At the end of the school year, the teachers were to leave at the same time the students would and just from my years in education, I know there is sometimes when grades are not put on report cards. It's not indicated whether or not a student had passed. And parents call in and they want to know these answers and [there] wouldn't be anyone to answer the questions. And I felt like the guidance teachers were the best qualified to do that since they would know all of the students. (Tr. at 42-43).

The superintendent determined that the needs of the school system would best be met by having the school calendar reflect the availability of guidance counselors for three days at the end of the school year to respond to questions raised by parents and students. However, recognizing that the collective bargaining agreement identified the number of days that guidance counselors must work, the superintendent determined to meet the calendar need for three days at the end of the school year by giving the guidance counselors three days off during the school year. (Tr. at 43).

Versions of the proposed 2003-04 school calendar were provided to the Dorchester County Board of Education in December 2002 at an open meeting of the board. Following that meeting, by letter dated December 17, 2002, Sylvia Barrios, the Dorchester Educators' President and member of the calendar committee, complained to Superintendent Reilly that directing guidance counselors to work four days [*sic*] following the end of the work year for other employees would violate Article 6.1 of the Negotiated Agreement and therefore require a reopening of the negotiations and a change in contract. Superintendent Reilly responded by letter dated December 18, 2002, stating in part:

Article 6.1 of the Negotiated Agreement does not address the establishment of the school calendar. It addresses the workday, and states that the Principal shall determine the hours of the workday, noting that they do not have to be identical for all employees. Furthermore, Maryland law stipulates that the school calendar is not a negotiable item, and that it shall be determined by the Board of Education. The district disagrees with your interpretation of Article 6.1 for this purpose, and will establish the calendar in what is believed to be the best interest of those we serve, namely the parents and the students. The rationale for counselors being in the buildings beyond the last regular school day is self-evident - to respond to parents who have questions about their child's placement, grades, etc. It will also allow time for high school counselors to establish the subsequent year's schedule, as well as answer any questions parents, graduating seniors or other students may have about their placement or

program of study. Lastly, it will enable the district to provide monitoring for students who may have missed the High School Assessment. This is a “Students First” initiative. I would hope that Dorchester Educators (DE) would recognize this, be in accord and be supportive of the initiative.

On January 8, 2003, in an open meeting the Dorchester County Board of Education adopted the school calendar for 2003-2004 that included the superintendent’s proposal to schedule three work days for the guidance counselors at the end of the school year, giving them three days off during the school year.

The Dorchester Educators appealed first to the local superintendent, then to the Dorchester Board. On June 12, 2003, the Dorchester County Board unanimously upheld the determination of the superintendent that scheduling the guidance counselors for work on different days from teachers was not arbitrary, capricious, or illegal. The Board further found that to negotiate the school calendar or the contents of the calendar would violate the language and intent of § 6-408(b)(3) of the Education Article.

This appeal to the State Board followed.

ANALYSIS

This appeal involves the interpretation of State statutes and State Board regulations. The standard of review is that “the State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.” COMAR 13A.01.01.03E(2).

The union argues that after deciding on the scheduling of the school calendar for students, the local board went on to set the work calendar for days falling after the end of the school year for students for a portion of the work force represented by the union, without engaging in negotiations with the union. The union asserts that it merely sought to have the local board negotiate with it concerning the scheduling of work days for some of its bargaining unit members that the board sought to schedule after the student school year was over. The union contends that the general duty of the local board to negotiate in good faith about all matters relating to “salaries, wages, hours, and other working conditions” obligates the board to negotiate concerning the scheduling of non-student work days falling after the end of the student school year.

The local board maintains that the term “school calendar” as used in § 6-408 of the Education Article is not limited to student days. As it notes, the phrase used in the statute is “school calendar,” not “student calendar,” and asserts that the school system sets the school calendar. The board points out that the union does not contend that a local board does not have the right to determine which days a school system should be open and closed, which days

students must report for a full or partial day, and which days the staff must report for full or partial days. Local boards unilaterally determine on which days students and staff must report and which days are full days and which days are partial days.

The statutory provisions at issue read as follows:

(b) (1) On request a public school employer or at least two of its designated representatives shall meet and negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on all matters that relate to salaries, wages, hours, and other working conditions.

(2) Except as provided in paragraph (3) of this subsection, a public school employer or at least two of its designated representatives may negotiate with at least two representatives of the employee organization that is designated as the exclusive negotiating agent for the public school employees in a unit of the county on other matters that are mutually agreed to by the employer and the employee organization.

(3) A public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, or any matter that is precluded by applicable statutory law.

Educ. § 6-408(b)(1)-(3).

Although the statute does not define the term “school calendar”, the issue of whether a school calendar is a negotiable topic was addressed by the Maryland Court of Appeals in *Montgomery County Educators Association v. Board of Education of Montgomery County*, 311 Md. 303 (1987). In that case, the Court defined school calendar as follows:

The school calendar sets the beginning and end of the school year. In addition, the calendar determines the days during the school year on which the schools are open for instructional purposes and for teacher ‘duty days.’ Conversely, the calendar determines the days during the school year on which the schools are closed for holidays and teacher ‘professional days.’

311 Md. at 305 n. 1. The Court went on to hold that the determination of the school calendar was not a negotiable topic. In doing so, the Court adopted the reasoning of the hearing examiner on the issue:

The County Board must harmonize the interests of three employee unions and the need for parents and students to be informed of the

school calendar in advance in order to plan their schedules. If the school calendar was deemed negotiable and if an agreement could not be reached between the union and the County Board, it is very likely that § 6-408(d) impasse procedures would be time-consuming with the school calendar remaining unscheduled to the detriment of members of the community.

311 Md. at 319.

Analogously, the State Board regulation on regular teacher contracts defines the term “school year” to be more than the student school year:

The term ‘school year’ as used in this contract means the period of time the certificated employee is obligated to perform duties (teaching and non teaching) under his or her assignment for a local school system.

COMAR 13A.07.02.01B(2).

We find it significant that neither the statutory language in § 6-408, the Court of Appeals’ definition of school calendar, or the State Board regulation on the regular teacher contract defines school calendar to be limited to the “student school calendar.” Moreover, the provision in the negotiated agreement for the Dorchester Educators does not address the scheduling of the days to be worked, *i.e.*, the school calendar. Rather, it only deals with the number of hours worked per day and the number of days worked per year:

The number of work days for teachers employed on a 10-month basis shall be 188 days in FY 2003, 189 in FY 2004, and 190 days in FY 2005.

See § 6.1 of Dorchester Educators’ Negotiated Agreement.

CONCLUSION

As described above, neither the statute at issue, Educ. § 6-408(b), the Court of Appeals’ decision defining school calendar, the State Board regulation defining school year, or § 6.1 of the Dorchester Educators Negotiated Agreement limits the term “school calendar” to the “school calendar for students.” There is no dispute that the number of hours worked per day and the number of days worked per year is negotiable. However, the scheduling of when the days are to be worked is part of the school calendar. We therefore conclude that setting the school calendar is not negotiable. Accordingly, we affirm the decision of the Dorchester County Board of Education upholding the school calendar that schedules three work days for guidance counselors

after the end of the student school year.

Edward L. Root
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JoAnn T. Bell
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ABSTAIN
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Dunbar Brooks

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Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

DISSENT

I find that this is a scheduling issue, not a school calendar dispute. Although I believe the basis for the decision is reasonable, I also believe the issue is negotiable. I therefore respectfully dissent.

Walter S. Levin, Esquire

October 28, 2003