

BALTIMORE COUNTY BOARD
OF EDUCATION,

Appellant

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 67, ET AL.

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 02-18

OPINION

The Baltimore County Board of Education seeks a decision regarding the arbitrability of a dispute between the local board and the American Federation of State, County, and Municipal Employees, Council 67 and Local 434 (“AFSCME”),¹ involving a reduction in the number of duty days for school bus drivers and attendants because of the shortening of the school calendar through the elimination of “inclement weather days.” The local board contends that the subject matter of the dispute involves the setting of the school calendar which is an illegal subject of collective bargaining and is therefore not arbitrable. AFSCME asserts that the issue falls within the scope of collective bargaining and is therefore subject to arbitration.

FACTUAL BACKGROUND

In May, 1999, the local board adopted an initial school calendar for the 2000-2001 school year providing that the last day of classes for students and teachers would be June 22, 2001. It also provided that “THE CALENDAR WILL BE REDUCED UP TO 5 DAYS IF NOT NEEDED TO OFFSET DAYS/HOURS WHEN SCHOOLS ARE CLOSED DUE TO INCLEMENT WEATHER.” (Emphasis in original). The local board distributed the initial calendar to students, parents, employees, and the public in 1999 and redistributed it in August, 2000.

In a memorandum dated August 15, 2000, Rita Fromm, Director of Transportation for Baltimore County Public Schools (“BCPS”), explained to BCPS bus drivers and attendants the payroll changes resulting from the stabilization of work hours and standardization of paychecks for the driver and attendant positions. School bus drivers and attendants had been historically classified as part time employees. Effective July 1, 2000, they were given the option of being either full time or part time at 40 hours per week or 25 hours per week, respectively. As a result, work hours no longer fluctuated when routes changed. The memorandum stated, in part:

¹AFSCME, Council 67 and Local 434, are the exclusive employee representatives for the bus drivers and attendants employed by the local board.

Here is how it works: We have totaled up all of the duty days, holidays, and inclement weather days in the calendar and divided that number by the number of bi-weekly pays. This process mirrors that which is in place for teachers and other instructional personnel.

Here is what you can expect: Your first paycheck will be for five days: four duty days and the Labor Day holiday. Each of your remaining 20 checks will be a constant bi-weekly pay for ten days.

Exceptions: The only fluctuations full-time employees may see during the course of the year will be for overtime occurrences or situations where leave time is exhausted. Part-time employees who are asked to work beyond 25 hours a week will also see those adjustments made as they occur.

Drivers and attendants who are assigned to non-public school runs that operate in excess of the Baltimore County School calendar will be reimbursed for the extra days at the end of the school year.

According to this memorandum, the bus drivers and attendants were to receive a total of 21 paychecks covering 205 work days, with the first paycheck covering 5 work days and all successive paychecks to cover 10 work days each.

In May, 2001, the local board reduced the school calendar by five days because those days were not needed that year to offset days when schools were closed due to inclement weather. By memorandum dated May 14, 2001, Rita Fromm advised the bus drivers and attendants that the last duty day for bus drivers and bus attendants would be June 15, 2001. With regard to pay adjustments, the memorandum stated:

The reduction in the number of duty days will be reflected in the final paycheck due out on June 29. Those drivers and attendants who have not used a personal business day this year will be paid for that day in the final check. The total number of paid days for school year 2000-01 for anyone who did not use personal business leave will be 200.

On July 20, 2001, Appellants filed a grievance claiming that reducing their pay based on the 5 days eliminated from the school calendar violated the Master Agreement between AFSCME and the local board and that bus drivers and attendants were entitled to receive

compensation for the week of June 15 through June 22, 2001.² The grievance was denied by Rita Fromm on August 31, 2001. In her decision, Ms. Fromm noted that the school calendar given to bus drivers and attendants indicated that the calendar could be reduced if the allotted number of inclement weather days was not used; that the long standing written agreement between AFSCME and the local board guaranteed bus drivers and attendants a minimum of 183 days in any one school year; and that there had never been any agreement guaranteeing bus drivers and attendants pay for all of the days originally scheduled on the school calendar.

Ms. Fromm further noted that neither her August 15 memorandum nor any other communication from the local board indicated that the number of duty days for drivers and attendants would not be reduced if the local board reduced the school calendar. She also indicated that when the 1999-2000 school calendar was reduced by four days because inclement weather days were not used, bus drivers and attendants were paid for one of the extra days for the mandatory annual inservice program that had been rescheduled, and were paid for the other three days only if they participated in voluntary part-time activities. Drivers and attendants who did not complete those activities did not receive pay for the remaining three days that they did not have to work as a result of the reduction in the calendar.

Thereafter, Appellants appealed the grievance to the superintendent. Following the hearing, the superintendent, through his designee, Randall Grimsley, denied the Step 4 grievance by letter dated December 4, 2001, stating in part:

The grievants believe that an individual office head has the right to set the student days which effect [sic] 10-month employees whose workdays are intertwined with instructional days. But, in fact, the Union has agreed with language in the agreement that only the Board has the right to adjust the calendar. The Board informed employees three months in advance of the start of the school year that the calendar could be reduced by five days.

When the Director of Transportation informed drivers in May, 2001 that the Board had reduced the school calendar by five days, it was no surprise. The Board had adopted that calendar one year earlier, in May 2000. In May, 2001 the Director invited all employees to come to meetings on the bus lots where the issue of the reduced work year and changes in the final paycheck were explained. It was noted by the Director that neither of the grievants attended the meeting.

No sections in the Master Agreement referenced by the grievants have any direct bearing on the issue raised in this grievance.

²The grievance was filed by Mark Ensor and Sharon Wheeler for themselves and all other employees similarly situated.

Therefore, no violation of the agreement is evident. This hearing officer has no choice but to deny the grievance.

AFSCME then requested arbitration with the American Arbitration Association (“AAA”). Under the AAA Voluntary Labor Arbitration Rules of Procedure, the failure or refusal of a party to participate in voluntary arbitration will not preclude AAA from proceeding with the arbitration. The local board maintains that arbitration is inappropriate here because the school calendar is not a lawful subject of collective bargaining.

On February 4, 2002, the local board sought from the Circuit Court for Baltimore County an order to stay the arbitration pending in the regional offices of the American Arbitration Association. The Honorable John F. Fader, III, denied the request for temporary restraining order, finding that the State Board had primary jurisdiction on the subject of the dispute. The local board has therefore requested that the State Board issue a ruling on whether the issue in this case is an illegal subject of collective bargaining and therefore not subject to arbitration.

ANALYSIS

Montgomery County Education Association Case

Under the law in effect at the time of this dispute, it was well established that “a local board is either required to agree to negotiate a particular subject, or it is not permitted to agree to negotiate that subject.” *Montgomery County Educ. Assoc., Inc. v. Bd. of Educ. of Montgomery County*, 311 Md. 303, 313 (1987). The mandatory subjects of bargaining were those areas which relate to “salaries, wages, hours, and other working conditions.” *See* Md Code Ann., Educ. § 6-408(b). In *Montgomery County Education Association*, the Court of Appeals affirmed the State Board’s determination that school calendar and job reclassification decisions were not subject to mandatory collective bargaining, even though reclassification decisions might affect an individual teacher’s wages or salary.

Merits

AFSCME maintains that this dispute does not entail the setting of the school calendar or educational policy. Rather, AFSCME asserts that the dispute relates directly to wages of bus drivers and attendants which are a fundamental concern of the employee. AFSCME variously refers to the August 15, 2000 memo from Rita Fromm as a “memorandum,” a “wage agreement,” a “compensation agreement,” and a “promise.” *See* AFSCME Response at 2, 4. On the other hand, the local board maintains that the dispute involves the setting of the school calendar, an illegal subject of collective bargaining, and that the setting of the school calendar and the wages paid to employees for working only those duty days designated by the calendar cannot be separated.

We concur with the local board. By setting the school calendar, the local board

establishes the duty days for bus drivers, attendants, and other employees. In *Montgomery County Education Association*, the Court of Appeals described the 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.”

Under the Master Agreement between the local board and AFSCME, bus drivers and attendants are paid only for duty days, with the exception of winter break, spring break, professional days, and leave. Master Agreement Amendment at XVIII. Duty days are defined as “[t]he days an employee is scheduled to work.” Master Agreement at Article VII. This dispute stems from the shortening of the 2000-2001 school calendar which in turn eliminated five duty days for bus drivers and attendants during the week of June 15 to June 22, 2001. Those are days that the bus drivers and attendants were therefore not scheduled to work. The effect of this change to the school calendar was that bus drivers and attendants did not receive pay for the duty days that were eliminated.

As stated by the Court in *Montgomery County Education Association*, “virtually every managerial decision in some way relates to ‘salaries, wages, hours, and other working conditions,’ and is therefore arguably negotiable.” 311 Md. at 316. Although the action of the local board in controlling the school calendar has an impact on the wages of certain employees, this fact does not make a matter negotiable. See *New Bd. of Sch. Comm’rs of Baltimore City v. Pub. Sch. Adm’rs and Supervisors Assoc. of Baltimore City*, 142 Md. App. 61 (2002) (holding that the reassignment of administrators is not subject to arbitration even though salary reductions occur); *Montgomery County Educ. Assoc., Inc. v. Bd. of Educ. of Montgomery County*, 311 Md. at 321 (holding that reclassification is an illegal subject of collective bargaining despite the fact that the impact of the decision relates directly to salaries or wages).

AFSCME argues that pursuant to *Montgomery County Educ. Assoc., Inc. v. Bd. of Educ. of Montgomery County (MCEA I)*, 1 Opinions MSBE 35 (1970), it has the right to negotiate the number of work days above the State mandated minimum of 180 school days, and that is what the present dispute concerns. AFSCME appears to be referring to the ability to negotiate the determination of the total number of days guaranteed in a year, if that number is above the State minimum. In fact, AFSCME and the local board have operated under a Memorandum of Understanding signed on May 9, 1997, guaranteeing bus drivers and attendants 183 paid duty days, including the use of two inclement weather days and one personal business day. The change to the school calendar did not reduce the number of duty days below 183. Thus, AFSCME’s argument on this point lacks merit.

From our review of the documents filed in this matter and applying the legal principles noted above, we believe that the dispute at issue is controlled by the *Montgomery County Education Association* case and is an illegal subject of collective bargaining.

CONCLUSION

For these reasons, we find that the dispute at issue is not subject to arbitration.³

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May 22, 2002

³However, the dispute over compensation and the impact of the August 15, 2000 memo from Fromm could have been appealed under § 4-205(c) of the Education Article if done on a timely basis.