STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

SEA ISLE CITY BOARD OF EDUCATION

-and-

Docket Nos. SN-86-85
& LAP-87-4-2

SEA ISLE CITY EDUCATION ASSOCIATION

DECISION

On May 7, 1986 the Sea Isle City Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission ("Commission") questioning the negotiability of certain contractual clauses for a unit of employees represented by the Sea Isle City Education Association ("Association"). The parties advised the Commission of their willingness to submit the instant dispute to the Commission's Litigation Alternative Program ("LAP"). The parties also agreed to have this case decided based upon the parties pleadings. The Board's legal argument was contained in the Petition, and the Association submitted a brief on August 4, 1986.

The Board seeks to remove certain clauses from the parties' most recent collective negotiations agreement allegedly because they are non-negotiable, and it seeks a decision supporting that result. The Association argues that all of the clauses are negotiable.

The facts show that the Association is the majority representative of a unit of professional and non-professional employees including teachers, cafeteria employees, bus drivers and custodians. The parties' most recent collective agreement expired June 30, 1986. The Board seeks to remove the language in Article 4, Para. C; Article 7, Para. B-1-a, B-1-b, and B-2-a; and Article 8, Para. B-1-b and B-2-b, contained in that agreement, from negotiations for a successor agreement.

Those articles of the contract provide as follows:

Art. 4 Para. C.

> No employee shall be reprimanded or reduced in salary or contractual benefits without just cause pending legislative action as stated in Art. II.

Art. 7

Para. B-1-a

> The bus driver/custodian shall work on a twelve month contract from July 1, 1982 to June 30, 1983.

Para. B-1-b

> The custodian shall work on a twelve month contract from July 1, 1982 to June 30, 1983.

Para. B-2-a

> The cafeteria cook/manager shall work on a ten month contract from September 1, 1982 to June 30, 1983.

Article 8

Para. B-1-b

> Duties [of the Cafeteria Cook/Manager] shall be to take complete charge of kitchen including

> purchasing, menu planning, assigning of duties, and general supervision of kitchen, fiscal control, cooking.

Para. B-2-b

> Duties [of the Cafeteria Cook Assistant] shall be to assist the cook/manager with cooking, serving, and other necessary duties.

Art. 4 Para. C.

In analyzing the negotiability of the above just cause provision I must first emphasize the Commission's longstanding policy that in scope of negotiations determinations the Commission will only consider the general negotiability of the subject matter in dispute, and will not attempt to apply the language to a variety of specific circumstances. Hillside Bd.Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975). In this case there is a mixed unit of professional and non-professional employees, and the clause is not addressed to particular titles in the unit, but is meant to apply to all unit members.

In New Providence Bd.Ed., P.E.R.C. No. 83-88, 9 NJPER 70 (¶14038 1982) and East Brunswick Bd.Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. A-5596-83T6, certif. den. 101 N.J. 280 (1985), the Commission held generally that just cause provisions which make disciplinary determinations reviewable through negotiated grievance procedures are negotiable and subject to binding arbitration. The Commission explained, however, that where certain employees, such as teachers, have statutory appeal procedures available to them covering such issues

as increment withholdings under the tenure laws, those issues cannot be submitted to binding arbitration, but they can be submitted to advisory arbitration. Bernards Tp. Bd.Ed. v. Bernards Tp. Ed.Assn., 79 N.J. 311 (1979). See New Providence, note 4, 9 NJPER at 73.

In New Providence, supra, the Commission concluded that the just cause provision therein was inappropriate because it made all disciplinary determinations potentially subject to binding arbitration, and because that clause specifically applied to teachers. In the instant case Art. 4, Para. C. applies to teachers and a variety of non-teaching staff employees who clearly have the right to have disciplinary determinations reviewed in binding arbitration because no statutory review procedures are available for them. East Brunswick, supra; Bernardsville Bd.Ed., P.E.R.C. No. 86-47, 11 NJPER 688 (¶16237 1985).

Thus, in analyzing Art. 4, Para. C. in the abstract, it is apparent that the clause is negotiable and arbitrable, but might not be appropriate for binding arbitration for teachers in certain circumstances. The Commission was aware of the potential for such circumstances to arise and held that:

> Should a dispute arise as to whether a particular employee has available a particular statutory right or appeal procedure, we can decide the arbitrability of that dispute in a more specific context. New Providence, 9 NJPER at 72.

Consequently, if a situation develops where the Board believes that a teacher has a statutory appeal procedure available to review a disciplinary or some other action, it may file a scope

petition with the Commission on a more specific question requesting a restraint for any attempt by the Association to submit such a matter to binding arbitration. I therefore conclude that Art. 4, Para. C. as currently worded is negotiable.

Art. 7, Para. B.

The law in this state is well settled, the length of an employee's work year is a mandatorily negotiable term and condition of employment. Piscataway Tp. Bd.Ed., P.E.R.C. No. 77-37, 3 NJPER 72 (1977), aff'd 164 N.J. Super. 98 (App. Div. 1978); Hackettstown Ed.Assn., P.E.R.C. No. 89-139, 6 NJPER 263 (¶11124 1980), aff'd App. Div.Dkt. No. A-385-80T3 (1/18/82), certif. den. 89 N.J. 429 (1982); Essex Cty. Vocational Schools, P.E.R.C. No. 81-102, 7 NJPER 144 (¶12063 1981); East Brunswick Bd.Ed., P.E.R.C. No. 82-11, 8 NJPER 320 (¶13145 1982); Sayreville Bd.Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983).

An employer cannot unilaterally reduce the work year or annual compensation of employees who are otherwise protected therefrom by a collective agreement. The Appellate Division in Piscataway, supra, held:

> ...[T]here cannot be the slightest doubt that cutting the work year, with the consequence of reducing annual compensation of retained personnel who customarily, and under the existing contract, work the full year (subject to normal vacations), and without prior negotiation with the employees affected, is in violation of both the text and spirit of the Employer-Employee Relations Act. Cf. Galloway Tp. Bd.Ed. v. Galloway Tp. Ed.Assn., 78 N.J. 25 (1978). 164 N.J. Super. at 101.

The clauses complained of by the Board in Art. 7, Para. B. clearly define the length of the work year for specific positions represented by the Association. The Association had--and still has--the right to negotiate the work year for those employees, and the continuation of similar language is clearly negotiable. I believe, however, that the use of the expired dates is unwise and unnecessary, and that the clause(s) should be made current, but the old dates do not support a finding that the clauses are not negotiable.

The statutory concerns raised by the Board are simply not applicable here. N.J.S.A. 18A:16-1 provides as follows:

> Each board of education, subject to the provisions of this title and of any other law, shall employ and may dismiss a secretary or a school business administrator to act as secretary and may employ and dismiss a superintendent of schools, a custodian of school moneys, when and as provided by section 18A:13-14 or 18A:17-31, and such principals, teachers, janitors and other officers and employees, as it shall determine, and fix and alter their compensation and the length of their terms of employment.

That statute was in effect and operable prior to the passage of our Act (N.J.S.A. 34:13A-1 et seq.). Those statutes, however, must be read in pari materia, that is they must be construed as a whole, to determine legislative intent. City of Clifton v. Passaic Cty. Bd. of Taxation, 28 N.J. 411, 421 (1958); Pfitinger v. Bd. Trustees Public Employees Retirement System, 62 N.J. Super. 589 (Law Div. 1960).

The legislative intent of our Act was to give public employees the right to negotiate their compensation and their terms

and conditions of employment. The decisions above defined length of work year to be a term and condition of employment. Thus, N.J.S.A. 18A:16-1 cannot be operative to permit an employer to unilaterally fix or alter, or to change the length of the work year of employees who have negotiated such terms into a collective agreement. N.J.S.A. 18A:16-1, however, would still apply to employees who are unrepresented.

N.J.S.A. 18A:17-3 provides in pertinent part as follows:

> Every public school janitor of a school district shall, unless he is appointed for a fixed term, hold his office, position or employment under tenure....

The Board has apparently interpreted the work year clauses in Art. 7, Para. B. to mean that the affected employees are employed for a fixed term, and are, therefore, not entitled to tenure pursuant to 18A:17-3. The Board's interpretation of the work year clause(s), however, is incorrect. Those clauses do not establish a "fixed term" for the employees holding those positions, that language only establishes the "work year" of employees holding those positions as either twelve or ten month positions. Normally, when employees are hired--even if they hold a series of one year employment contracts--they are hired for an indefinite period. It is only when an employee is first hired and given a fixed termination date that one could argue that it is for a fixed term. That does not appear to be the situation in the instant matter because I presume that the employees were not automatically terminated on June 30, 1983.

The Board must also understand that although the specific dates in Art. 7, Para. B. are no longer effective, the length of the work year of those positions, twelve months or ten months, is part of the status quo and cannot be unilaterally changed unless the parties remain at impasse and have exhausted their impasse procedures. The Board is entitled, however, to negotiate a change in the work year language both to eliminate the use of the old dates, and to change the length of the work year in general.

Thus, the clauses in Art. 7, Para. B. are mandatorily negotiable.

Art. 8 Para. B.

The law is well settled that public employers in this State have a non-negotiable managerial prerogative to assign unit employees job duties related to their normal job functions. Rutgers, The State University, P.E.R.C. No. 84-45, 9 NJPER 663 (¶14287 1983); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983); Monroe Tp. Bd.Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984). In addition, public employers are entitled to create job descriptions, and such job descriptions are not negotiable except to the extent that a particular job description specifies terms and conditions of employment such as compensation, work year or hours of work. Hoboken Bd.Ed., P.E.R.C. No. 84-139, 10 NJPER 353 (¶15164 1984); West Deptford Bd.Ed., P.E.R.C. No. 80-95, 6 NJPER 56 (¶11030 1980).

The content of Art. 8, Para. B. does not include any term and condition of employment. The contractual clauses in question list only the duties of particular positions and is akin to a job description and is therefore non-negotiable.

The Association's argument that the pertinent language is included in the agreement only to monitor workload, and potential workload changes--as a reason why that information is negotiable--is not persuasive. The elimination of the pertinent language from the parties' agreement will not prevent the Association from raising workload issues before the Commission at the appropriate time and in the appropriate context. The placement of such language in the parties' agreement, however, would give the impression that the assignment of or change of duties is negotiable or arbitrable and, therefore, adversely impact upon a managerial prerogative. Consequently, I conclude that the pertinent language in Art. 8, Para. B. is not negotiable and may not be included in the parties' collective agreement.

Arnold H. Zudick
Commission Designee

Dated: September 26, 1986
Trenton, New Jersey