

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION  
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

HOLLAND TOWNSHIP BOARD OF  
EDUCATION,

Public Employer and Petitioner,

-and-

Docket Nos. SN-85-96

LAP-85-20

HOLLAND TOWNSHIP EDUCATION ASSOCIATION,

Public Employee Representative and  
Respondent.

Appearances:

For the Holland Township Board of Education  
Cassetta & Taylor, Consultants  
(Garry M. Whalen)

For the Holland Township Education Association  
Klausner & Hunter, Esqs.  
(Stephen B. Hunter, Esq.)

DECISION ON PETITION FOR  
SCOPE OF NEGOTIATIONS DETERMINATION

On April 30, 1985 the Holland Township Board of Education (hereinafter the "Board") filed a Petition for Scope of Negotiations Determination, claiming that 14 clauses in the current collective negotiations agreement between the Board and the Holland Township Education Association (hereinafter the "Association") were non-negotiable and, thus, should be deleted from the agreement.

In or around May 30, 1985 the parties agreed to have the matter heard and determined under the Litigation Alternative Program

(hereinafter the "LAP procedure") and further agreed to be bound by the decision rendered by the Commission representative assigned to hear the case.

The undersigned was assigned to hear and determine the instant matter in or around June 12, 1985 and a hearing date was scheduled by agreement for June 25, 1985 at the Commission's office in Newark, New Jersey. Prior to the hearing, the parties filed comprehensive briefs in support of their respective positions. The hearing was convened as scheduled and the parties confirmed at the outset their agreement to be bound by the determination of the undersigned.

There is annexed hereto a list of the 14 language items in dispute, which are currently included in the collective negotiations agreement between the parties effective July 1, 1983 through June 30, 1985. For convenience in this decision the undersigned will make reference to the language in dispute by reference to the articles by Roman numeral and the subsections thereto. The order of the contract articles in dispute as set forth herein is identical to the order of the articles set forth in the original Petition for Scope of Negotiations Determination.

At the hearing there were several instances wherein the parties agreed to certain modifications in language and these agreements will be noted hereinafter in the proper sequence.

ARTICLE I (FIRST PARAGRAPH)

The Board objects that this provision contains non-negotiable educational goal statements. The undersigned,

distinguishing Fairview Board of Education, P.E.R.C. No. 80-18, 5 NJPER 378 (1979), finds that this provision does not pertain to "modes of providing quality education" or imputing special knowledge to teachers. Thus, it is mandatorily negotiable.

ARTICLE III, SECTION A

This provision pertains to the definition of a grievance. In order to make clearer that this provision is mandatorily negotiable, the undersigned finds that there should be an addition as follows: After the word "affecting" there shall be added the phrase "the terms and conditions of employment of any" and then continuing "teacher, a group of teachers or the Association." The undersigned concludes that the language as amended herein is in closer conformity to the decision of the Supreme Court in Township of West Windsor v. PERC, 70 N.J. 98, 109 (1978).

ARTICLE IV, SECTION A

The parties agreed at the hearing that this language shall be deleted in its entirety. The basis for this agreement is the additional agreement of the parties as to a change in the language of Article XXII, (second paragraph), infra.

ARTICLE IV, SECTION D

The parties reached agreement at the hearing that the first sentence of this article and section shall be deleted and that the second and remaining sentence shall be retained inasmuch as it pertains to procedure and is mandatorily negotiable.

ARTICLE IV, SECTION E

It was agreed that this article and section shall remain in the agreement in its present form.

ARTICLE IV, SECTION F

This clause as written is mandatorily negotiable with the following modifications, and shall read as follows:

No teacher shall be disciplined, discharged, reprimanded, reduced in rank or compensation, or deprived of any professional advantages granted in this Agreement without just cause, provided that there shall be excluded from binding arbitration of disciplinary disputes those involving employees with statutory protection under the tenure laws or alternate statutory appeal procedures.

The changes noted above eliminated the language concerning non-negotiable evaluations and, in adding the proviso, the language now conforms with such Commission decisions as North Hunterdon Bd. of Ed., P.E.R.C. No 85-100 (1985).

ARTICLE VII, SECTION G

This clause pertains to making extra-curricular activities voluntary and is clearly non-negotiable: Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (1984).

ARTICLE IX, (FIRST PARAGRAPH)

This provision contains a goal statement which is non-negotiable under Rutgers AAUP, P.E.R.C. No 84-44, 9 NJPER 661 (1983).

ARTICLE IX, SECTIONS B(1) AND D

These provisions pertain to limitations on the Board in the assigning of employees to the cafeteria, bus loading or unloading, etc. Article IX, Section D also pertains to a limitation on the use of aides in the proctoring of in-school suspensions. Both provisions are non-negotiable: Spotswood Bd. of Ed., P.E.R.C. No. 81-109, 7 NJPER 159 (1981) and Byram Twp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976).

ARTICLE XII

This provision pertains to involuntary transfers or reassignments. The parties agreed that the sentence providing that "The transfers shall not conflict with the instructional requirements and best interests of the school system and its pupils" is non-negotiable and shall be removed from the Agreement. The first and last sentences, pertaining to notice, are deemed procedural and mandatorily negotiable by the undersigned, to which the parties concur. These portions of Article XII shall remain in the Agreement.

ARTICLE XVI, SECTION C

This provision, restricting the Board's right to request a doctor's certificate, is non-negotiable under Piscataway I and II.

ARTICLE XXI (FIRST PARAGRAPH)

This provision pertains to the duration of summer school and the rights of existing teachers to have first refusal for summer school employment. It was agreed that the last two sentences be deleted, which pertain to the right of first refusal and circumstances under which the Board may employ out of district teachers. The initial portion above that, beginning "Summer school session" and ending "student contact time" shall remain in the Agreement.

ARTICLE XXII (SECOND PARAGRAPH)

It was agreed by the parties that this provision, as hereinafter amended, shall remain in the agreement:

The Board and the Association agree that there shall be no discrimination with regard to hours, wages or other terms and conditions of employment in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile or marital status.

The parties agree that this amendment to Article XXII, second paragraph, brings the language in conformity with such court decisions as Teaneck Twp. Bd. of Ed., 94 N.J. 9 (1983).

ARTICLE IV, SECTION G

This provision pertains to the free exchange of professional ideas, a clause which appears to be ruled by Rutgers AAUP, supra. The undersigned finds that the article is non-negotiable.

CONCLUSION

The foregoing constitutes a resolution by the undersigned, or by agreement of the parties, of the 14 contract clauses which were placed in issue by the Petition for Scope of Negotiations Determination. Given the agreement of the parties to submit the dispute to the LAP procedure, the Board shall forthwith withdraw the Petition for Scope of Negotiations Determination.

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Alan R. Howe  
Hearing Examiner

Dated: July 1, 1985  
Trenton, New Jersey