H.E. NO. 92-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY EDUCATIONAL
SERVICES COMMISSION,

Respondent,

-and-

Docket No. CO-H-91-44
& SN-H-91-14

CAMDEN COUNTY EDUCATIONAL
SERVICES EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Capehart & Scatchard, Attorneys
(Joseph Betley, of counsel)

For the Charging Party, Freeman, Zeller & Bryant, Attorneys
(Morris G. Smith, of counsel)

DECISION ON MOTION
FOR SUMMARY JUDGMENT

On August 24, 1990, the Camden County Educational Services Educational Association ("CCESEA") filed a Petition for scope of negotiations determination with the Public Employment Relations Commission ("Commission"). The CCESEA seeks a determination that mandatory faculty meeting attendance for part-time teachers is within the scope of negotiations. On August 27, 1990, the CCESEA filed an unfair practice charge alleging that the Camden County Educational Services Commission ("County") violated sections 5.4(a)(5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A.. 34:13A-1 et seq. ("Act"). The CCESEA alleges that on or

about March 27, 1990, the County unlawfully refused to negotiate compensation for part-time teachers after requiring them to attend faculty meetings.

On November 8, 1990, the Director of Unfair Practices issued a complaint and notice of hearing and an order consolidating the unfair practice charge and scope of negotiations petition.

On December 3, 1990, the County filed an Answer admitting some facts and denying other facts and allegations. It also asserted that that charge is untimely filed, that it is barred by the doctrine of laches, that no changes in terms and conditions of employment occurred, and that the subject is non-negotiable.

A hearing was scheduled, postponed and rescheduled for March 20 and 21, 1991. On February 11, 1991, the County filed a motion for summary judgment and stay of proceedings, pursuant to N.J.A.C. 19:14-4.8. The motion was accompanied by other documents, including copies of grievance decisions. The County urged dismissal because the charge is untimely filed, the matter is deferrable to the parties' grievance procedure, and no unilateral change has occurred.

The motion was referred to the Chairman of the Commission, pursuant to N.J.A.C. 19:14-4.8. He referred the motion to me for a decision.

The CCESEA filed no other documents or statement of position. Based upon the papers filed, I make the following:

UNDISPUTED FINDINGS OF FACT

1. The Camden County Educational Services Education Association is an employee representative within the meaning of the Act and represents "all professionals including instructional personnel required to be certified by the State Board of Examiners" (certification of representative, dkt. no. RO-86-141, 9/23/86).

2. The Camden County Educational Services Commission is a public employer within the meaning of the Act.

3. The CCESEA and the County signed a collective negotiations agreements extending from 1986 - June 30, 1989 and July 1, 1989 - June 30, 1991. The grievance procedure (Article III) has four steps, ending with a decision by the "Commission Grievance Committee."

4. The agreement has teacher work year (Article VI) and teaching hours (Article VII) provisions. Article VI states that the teacher work year shall not exceed 185 days and that the in-school work year "includes days when pupils are in attendance and any other days when teacher attendance is required."

The agreement also states,

> Part-time employees will be paid on a pro-rata basis of one-fifth of their appropriate step of the appropriate salary schedule for each full six and one half hour work day that they teach....
>
> [Article XII]

The agreement also has a "management rights" provision (Article IX) stating in part that the employer may, (subject to the terms of the agreement),

> determine class schedules, hours of instruction, the duties, responsibilities, assignments of teachers and other employees with respect thereto, non-teaching activities, and the terms and conditions of employment of all employees.
>
> [Article IXA5]

The agreement also has a "complete and total agreement" provision (Article IID) and a "zipper" clause (Article IIF).

5. In September 1988, the County issued a "Handbook for Teachers" stating in part:

> Faculty meetings for all Commission teachers will be scheduled once a month. The primary purpose of these meetings will be for the dissemination and discussion of Commission policies and procedures. All teachers are responsible for faculty meeting information and decisions regardless of their attendance.
>
> [1988 Handbook, p. 7]

6. In September 1989, the County "Handbook for Teachers" stated in part:

> Attendance at all faculty meetings and inservices is required regardless of teacher's scheduled days, unless notified.
>
> [1989 Handbook, p. 8]

7. The "faculty meeting" paragraph in the 1988 Handbook also appeared in the 1989 handbook. The Association had no previous notice of the alleged change.

8. On October 20, 1989, the Association filed a contractual grievance asserting that the County violated Articles VI and XII of the agreement by requiring "part-time employees to report for work inservice programs and/or faculty meetings without compensation on days they are not scheduled to work..." The grievance also asserted that the acts occurred on October 6.

9. The grievance was denied on October 30, 1989. A grievance hearing was conducted on January 3, 1990 and the grievance committee issued a final decision denying the grievance on January 24, 1990.

10. On March 19, 1990, the Association formally demanded to negotiate over the requirement that part-time employees attend Commission inservice and faculty meetings on days other than scheduled work days without compensation.

11. On March 27, 1990, the County refused to negotiate the subject.

ANALYSIS

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standard for determining whether a subject is mandatorily negotiable:

> [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, 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 403-404]

The Association seeks a determination that faculty meeting attendance for part-time teachers is within the scope of

negotiations. The grievance it filed also claimed that part-time teachers had to attend "inservice programs and/or faculty meetings..."

A public employer has the managerial prerogative to mandate continuing educational or training programs for its employees. Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). Procedural aspects of these programs and compensation are mandatorily negotiable. Tp. of Franklin; Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-90, 9 NJPER 670 (¶14292 1983).

Accordingly, I recommend that the County may require part-time teachers to attend inservice training and faculty meetings and that matters such as compensation and notice are in the abstract, mandatorily negotiable.

Summary judgment may be granted:

> [i]f it appears from the pleadings, together with the briefs and other documents filed, that there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law.
>
> [N.J.A.C. 19:14-4.8(d)]

See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954); New Jersey Civil Practice Rules (R.4:46-2). Summary judgment may be granted only with extreme caution. The motion must be considered in the light most favorable to the opposing party, all doubts must be resolved against the moving party, and the procedure may not substitute for a plenary hearing. State of New Jersey

(Human Services), P.E.R.C. No. 89-52, 14 NJPER 695 (¶19297 1988), citing Baer v. Sorbello, 177 N.J. Super 182, 185 (App. Div. 1981).

"Material facts" tend to establish the existence or non-existence of an element of a charge or defense that is derived from the controlling substantive law. See Lilly on Introduction to the Law of Evidence (West Publishing 1978) at p. 18; McCormick, On Evidence (West Publishing, 2nd edition; 1978) at p. 434.

The gravamen of the Association's charge is that the County refused to negotiate compensation over its requirement that part-time faculty attend inservice and faculty meetings. The Association's demand to negotiate on the severable issue of compensation comports with Commission policy. Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984); Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987). See also Ramapo-Indian Hills Ed. Assn. v. Ramapo-Indian Hills Reg. H.S. Dist. Bd. of Ed., 176 N.J. Super 35 (App. Div. 1980).

The Association first contractually grieved the right of the County to unilaterally impose the attendance requirement. Less than two months after the County denied the grievance, the Association demanded to negotiate compensation for the required attendance.

The County argues that the Association was obligated to file its charge within six months of its notice that part-time faculty attendance at inservice and faculty meetings was required. The alleged unfair practice, however, concerns the County's refusal

to negotiate compensation for and not the unilateral imposition of the attendance requirement. The contract provisions are not "clear and unequivocal" waivers of the Association's right(s) to seek compensation over severable matters. At the very least, a question of fact exists as to whether the 1989 Handbook was incorporated into the parties' then-current collective negotiations agreement. Under all these circumstances, I cannot conclude that the charge was untimely filed and that the County had no duty to negotiate compensation.[1/]

The motion is denied.

Jonathon Roth
Hearing Examiner

Dated: July 8, 1991
Trenton, New Jersey

1/ If the Association proves by a preponderance of evidence that the County engaged in unfair practice, I cannot recommend a remedy extending beyond six months before the charge was filed.