

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANCHESTER REGIONAL HIGH  
SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-79-67

MANCHESTER REGIONAL EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination the Commission finds that a dispute relating to the number of teacher observations per year relates to evaluation procedures which are mandatorily negotiable. The Commission in this regard notes that regulations have been adopted by the State Board of Education regarding the evaluation of tenured teachers. See N.J.A.C. 6:3-1.21. The Commission notes that these particular regulations are effective September 1, 1979 and states that it is not considering the effect of these regulations on the instant dispute. The effect of these regulations was neither raised nor argued by the parties.

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Appearances:

For the Petitioner, Samuel A. Wiener, Esq.

For the Respondent, Zazzali, Zazzali & Whipple, Esqs.  
(Albert G. Kroll, on the Brief)

DECISION AND ORDER

On February 8, 1979 a Petition for a Scope of Negotiations Determination was jointly filed with the Public Employment Relations Commission by the Manchester Regional High School District Board of Education (the "Board") and the Manchester Regional Education Association (the "Association") seeking a determination as to whether a matter in dispute between the parties is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A5-1 et seq. (the "Act").

The Association submitted a letter memorandum in lieu of brief on February 7, 1979 and the Board filed its brief on February 13, 1979. At issue herein is the negotiability of the number

of annual teacher observations conducted by supervisory and administrative personnel for the purpose of staff evaluations.

The dispute arose when, on September 25, 1978, the Board passed a resolution requiring department chairpersons to conduct at least five observations per year of teachers under their immediate supervision and requiring administrative staff to conduct a minimum of three such observations. The Board disputes a statement in the Association's brief that the number of observations was left to the discretion of department chairman. We accept, for purposes of this decision, the Board's assertion that it had an administrative direction governing this matter.

The Association's position is that the number of observations is a procedural aspect of evaluation which, in accordance with prior Commission decisions, is a required subject of negotiations.

The Board, on the other hand, contests the claim that the number of evaluations is procedural and argues that the subject is not a required subject of negotiations.

In rendering a decision in this type of scope controversy, the Commission, as recognized by both parties herein, has distinguished between evaluation procedures and substantive evaluation criteria; the former being mandatorily negotiable while the latter, under Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) are non-negotiable managerial prerogatives.

For example, in In re Board of Education of the City of Englewood, P.E.R.C. NO. 76-23, 2 NJPER 72 (1976), rev. on other grounds, 150 N.J. Super. 265 (App. Div. 1977), certif. den. 75 N.J. 525 (1977), the Commission held that an evaluation procedure, which required three written supervisory reports per year for non-tenured teachers, with each report being accompanied by a full discussion with the affected teacher, related to terms and conditions of employment and constituted a proper and required subject for collective negotiations.<sup>1/</sup>

Generally procedures which relate to how the actual evaluation process should be conducted, who shall be evaluated, and format of these evaluations go to reasonable expectations of teachers to notice of what is expected of them to be able to attain job security. We have found that the right to have input into procedures such as the timing and manner of observation does not interfere with any inherent managerial prerogatives. We say this while at the same time recognizing that the number of times an employer observes an employee may affect the employee's final evaluation by the employer and to that extent it has a bearing on the employer's decision regarding retention, etc. Nevertheless, this subject intimately and directly affects employees' terms and conditions of employment and can be negotiated without significant infringement upon the exercise of managerial prerogatives.<sup>2/</sup>

In those instances where the Commission has found that disputes pertaining to evaluations do relate to criteria rather than procedure, the subjects involved have been integral to the

<sup>1/</sup> 2 NJPER at 74.

<sup>2/</sup> See In re Ridgefield Park Bd of Education, P.E.R.C. No. 77-71, 3 NJPER 303 (1977).

evaluation process. Thus, in In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER 303 (1977) the resourcefulness and adaptability of a teacher, his or her ability to motivate students, the utilization of resources, and relationships with parents, pupils and staff were all found to directly affect the formulation of educational policy.

Based upon the foregoing discussion, we are satisfied that the number of teacher observations per year is most accurately classified as an evaluation procedure which is mandatorily negotiable. The Commission cannot discern any significant impingement upon management's ability to set policy by requiring negotiations on this matter.<sup>3/</sup> While the number of observations must be negotiated, it goes without saying that the parties cannot agree to a contractual provision which would contravene existing state statutes or regulations.<sup>4/</sup> Therefore, for example, N.J.S.A. 18A:27-3.1, which requires three observations of non-tenured teachers per year, must be viewed as a minimum below which the parties may not go.<sup>5/</sup>

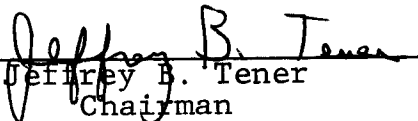
<sup>3/</sup> One of the concerns expressed by the Board if it is required to negotiate regarding the number of evaluations is that the parties might be unable to reach an agreement. This Board is referred to our decision in In re City of Jersey City, P.E.R.C. No. 77-58, 3 NJPER 122 (1977) wherein that situation is considered. Suffice it to say that the scenario laid out by the Board in the event the parties fail to reach an agreement is unrealistic. The Board also contends that the Association's proposal to negotiate regarding the number of evaluations has cost implications for the Board. While true of this item as with many others, this fact does not affect the negotiability of the issue.

<sup>4/</sup> See State v. State Supervisory Employees Association, 78 N.J. 54 (1978).

<sup>5/</sup> We also note that regulations have been adopted by the State Board of Education regarding the evaluation of tenured teachers. See N.J.A.C. 6:3-1.21. These regulations are effective September 1, 1979 and we are not now considering the effect of these regulations on this dispute. It was not raised or argued by the parties.

Accordingly, based upon the entire record, the Commission finds that the instant dispute relates to a term and condition of employment and is therefore mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels  
voted for this decision. None opposed. Commissioners Hipp  
and Newbaker abstained.

DATED: Trenton, New Jersey  
March 8, 1979  
ISSUED: March 9, 1979