

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COMMUNITY COLLEGE,

Petitioner,

-and-

Docket No. SN-77-42

SALEM COMMUNITY COLLEGE
FACULTY ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Salem Community College, the Commission determined that requirements for academic rank are a permissive subject for collective negotiations. Similarly, the Commission held that qualifications for promotions is a permissive subject for collective negotiations. The impact on terms and conditions of employment of the policy regarding academic rank requirements is held to be a mandatory subject of collective negotiations. Additionally, the Commission determined that the policy regarding the receipt of salary increments for unit members is a mandatory subject of collective negotiations.

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Appearances:

For the Petitioner, G. Thomas Bowen, Esq.

For the Respondent, Greenberg & Mellk, Esqs.
(Mr. Arnold M. Mellk, of Counsel)

DECISION AND ORDER

On June 21, 1977, Salem Community College (the "College") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The issues in dispute arose from a policy adopted by the Board of Trustees of the College on June 21, 1976, which reads as follows:

"All members who do not presently meet academic rank requirements and who benefit from work experience credit must satisfactorily complete nine academic credits per year in order to qualify for the rank which they have obtained by work experience. Failure to complete the nine credits will disqualify

the faculty members involved for promotion and salary increases."

The facts indicate that following adoption of this policy the Board of Trustees of the College notified the Salem Community College Faculty Association (the "Association") that it would delay implementation pending a scope of negotiations determination by the Commission. Accordingly, the policy has not been implemented to date.^{1/}

By way of background, the College stated in its letter brief that it desires to implement the above-quoted policy in order to effectuate the transformation of the College into a community college type facility from the vocational school which it was prior to the founding of the College in September 1972. Some of the employees of the vocational school and others hired by the College soon after September 1972 were given credit for work experience even though their academic backgrounds in some cases are less than is now deemed appropriate by the College.

The position of the College is that the policy in issue may be adopted as a matter of managerial prerogative. In taking this position, the College relies upon the Commission's decision in In re Plainfield Patrolmen's Benevolent Association, Local #19, P.E.R.C. No. 76-42, 2 NJPER 216 (1976), which stated,

"That the qualities which are felt to be essential prerequisites to the performance of a particular job are not terms and conditions of employment but rather are

^{1/} For reasons unknown to the Commission, although the policy in issue was adopted on July 21, 1976, the College did not choose to file the instant petition until June 21, 1977.

within the employer's prerogatives. As such, expectations developed with regard to these qualifications or any reliance placed on their not changing are not terms and conditions of employment /footnote deleted/. They are within the control of the City and the City is not required to negotiate with the PBA when it decides to change them."

The position of the Association is that the requirements in the policy at issue are not managerial prerogatives; and, in the alternative, even should the Commission find these requirements to be permissive subjects, that the impact of the policy upon terms and conditions of employment is mandatorily negotiable.^{2/}

We find that the policy at hand actually raises several issues which must be analyzed. First, there is an issue regarding the negotiability of the College's decision to require faculty members who do not meet academic rank requirements and who benefit from work experience credit to satisfactorily complete certain academic requirements in order to qualify for the rank which they have attained by work experience.

Additionally, there are two separate issues regarding the negotiability of the consequences of failing to obtain the required academic credits: disqualification for promotion and disqualification for salary increases.

^{2/} A significant portion of the Association's letter brief is devoted to the issue of the time when the College might implement the policy in issue. The Association feared the potential prejudicial effect the timing might have upon the current unit members. It is important to emphasize that in a scope of negotiations proceeding, our jurisdiction is strictly limited to a determination of the negotiability of the actual matters in dispute. However, we note that in a letter dated September 14, 1977 Mr. Bowen, for the College, stated that the College would voluntarily postpone implementation of the policy until January 1978, pending the resolution of this matter by the Commission.

Before considering these issues, it is useful to point out that we have frequently drawn a distinction between certain educational or managerial policy decisions which we have found not to be mandatorily negotiable and the effect of those decisions on employees' terms and conditions of employment which we have held to be mandatorily negotiable. This approach has been affirmed by the Appellate Division in In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N. J. Super. 12 (App. Div. 1977).^{3/}

Applying this analysis to the instant case results in our holding that the decision of the College to require that those faculty members who had benefited from work experience credits must now earn academic credits is an educational policy decision and not mandatorily negotiable. Similarly, the College's determination to utilize this requirement in evaluating people for promotion is also an educational policy judgment and is thus not a term and condition of employment. However, the impact of these decisions on the employees' terms and conditions of employment is mandatorily negotiable.

To the extent that these issues relate to qualifications for employment and promotions, this case is closely analogous to several earlier cases which we have decided. For example, in In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976), we held that qualifications or prerequisites for employment are

^{3/} See also In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976).

managerial prerogatives which are permissively but not mandatorily negotiable.^{4/} Similarly, in Plainfield, supra, we held that the educational requirements for eligibility for promotions are managerial decisions which are not mandatorily negotiable.

As stated, however, the impact of these decisions on terms and conditions of employment is mandatorily negotiable. To illustrate, one area of impact would include the number of credits to be earned per year or the amount of time within which a certain number of credits must be earned. Other possible areas of impact might be reimbursement for the costs associated with earning the necessary credits, the special consideration in scheduling to permit the employee to earn the credits and still meet his or her job responsibilities, leaves of absence to meet the degree requirements, etc.^{5/} Each of these items is a term or condition which is mandatorily negotiable in that each affects an employee's earnings or mandatory expenditures, hours of work and total workload, and so on.

^{4/} The Commission has concluded that matters regarding terms and conditions of employment are required subjects of collective negotiations and that matters where mutual or bilateral agreement would modify or contravene a statute that specifically limits the authority or discretion of a public employer are illegal subjects. The Commission has defined a permissive subject as one which is neither illegal nor required. Therefore, if a party chooses not to negotiate upon it, the other party cannot require that it be negotiated, but conversely, if it is raised, the parties are permitted to negotiate upon it and reach agreement if they can, and that agreement, incorporated in the contract, is enforceable as part of the contract. In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER _____ (1977).

^{5/} Our holding that the impact is mandatorily negotiable does not mean that the College will necessarily agree with any proposal which may be put forth by the Association. See State of New Jersey v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976).

The portion of the College's policy relating to qualifications for receipt of normal salary increments^{6/} raises issues which go beyond Plainfield, supra, and must be distinguished from the above discussion. Our reading of this latter aspect of the policy indicates that the College intends to deny any faculty member a salary increment who did not earn the necessary credits as set forth in the policy. Increments are part of salary and, as such, are obviously terms and conditions of employment. See Bd. of Ed. Englewood v. Englewood Teachers, 64 N.J. 1 (1973).

The negotiability of this point has already been decided in the case of Education Association of Passaic v. Passaic Board of Education, Docket No. A-3082-75, ___ N.J. Super. ___ (App. Div., 1977), where the court determined that a unilaterally implemented policy requiring teachers to obtain five additional credits to qualify for a sixth year salary increment was mandatorily negotiable because it had a direct bearing on terms and conditions of employment. This aspect of the College's policy would appear indistinguishable from this case and our conclusion would seem dictated by that case. Therefore, the use of this requirement as a means of determining one's eligibility for salary increments is mandatorily negotiable.

The Passaic decision distinguishes the case of Clifton Teachers v. Clifton Board of Education, 136 N.J. Super. 336 (App. Div. 1975). The Clifton case dealt with N.J.S.A. 18A:29-14 which

^{6/} We assume that the increments referred to are not merit increments.

allows a board of education to withhold a salary increment for "inefficiency or other good cause". The Clifton court held that a board of education may not negotiate away its obligation, pursuant to N.J.S.A. 18A:25-14,^{7/} to condition teacher salary increments upon a determination of satisfactory service.

The Passaic court held that the requirement of a number of credits was not the same as predicating the payment of increments on a subjective assessment of the quality of one's actual teaching performance. The court therefore concluded that since increments directly affect and are part of salary, the additional requirement for such a salary item was a mandatorily negotiable term and condition of employment. In this case the inflexible, objective nature of the policy in issue, as with that in the Passaic case, imposes a standard not set forth in the statute or elsewhere.^{8/}

Based upon the above analysis we find that the establishment of a policy on the attainment of certain academic credits as part of the transition from a vocational school to a community college is an educational policy judgment which is not mandatorily negotiable, and the use of that policy in determining one's qualifications for promotion is similarly not mandatorily negotiable.

^{7/} Applicable in the case at hand through N.J.S.A. 18A:64A-13.

^{8/} In In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER (1977), we held that the criteria used in the evaluation of the quality of a teacher's performance is an educational policy judgment and may be used in evaluating a "satisfactory" performance for increments pursuant to N.J.S.A. 18A:29-14. The analysis in that case is consistent with our discussion above and with those Passaic and Clifton cases, supra.

We note that these matters may be negotiated on a permissive basis. We further find that the impact of this policy on terms and conditions of employment, including but not limited to the time frame in which such credits must be earned, is mandatorily negotiable, as is the use of this policy as a means of determining one's eligibility for salary increments.

ORDER

With respect to the academic rank requirements set out in the policy in dispute, which we hereby determine to be a permissive and not a mandatory subject for collective negotiations, the Salem Community College Faculty Association is ordered to refrain from insisting, to the point of impasse, upon the inclusion of such matter in a collective negotiations agreement with Salem Community College.

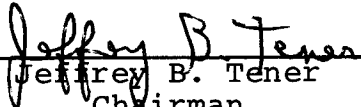
With respect to the qualifications for promotions, hereby determined to be a permissive but not a required subject for collective negotiations, the Salem Community College Faculty Association is ordered to refrain from insisting, to the point of impasse, upon the inclusion of such matters in the collective negotiations agreement with Salem Community College.

With respect to the impact of that policy upon terms and conditions of employment, which we have determined to be a mandatory subject of negotiations, Salem Community College is hereby ordered to negotiate in good faith upon demand of the Salem Community College Faculty Association.

With respect to the policy as it applies to the receipt

of salary increments, which we have determined to be a mandatory subject of negotiations, Salem Community College is hereby ordered to negotiate in good faith upon demand by the Salem Community College Faculty Association.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Hartnett voted for this decision. Commissioner Parcels voted against this decision. Commissioner Hurwitz dissented in part and concurred in part. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
November 15, 1977
ISSUED: November 17, 1977