

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-76-29

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Petitioner,

-and-

Docket No. SN-77-2

RIDGEFIELD PARK BOARD OF EDUCATION,

Respondent

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board, the Commission determines that the decision to adopt an Index for Teacher Effectiveness containing a list of general criteria utilized by the Board in determining whether teachers within the district are performing at levels deemed necessary by the Board to fulfill the educational mission of the school system, for purposes of awarding tenure, granting salary increments and the evaluation of staff development, does not relate to a required subject for collective negotiations. The Education Association was thereby ordered to refrain from insisting to the point of impasse upon the inclusion of the Index in negotiations with the Board of Education. The Commission concludes, however, that in the absence of any specific statutory proscription, nothing would preclude the parties from negotiating about the Index in the future, i.e., it is a permissive subject of negotiations.

In this decision, the Commission carefully reviewed the framework for analysis that it has applied to scope of negotiations determinations in the past. The Commission again noted that the 1974 amendments to N.J.S.A. 34:13A-8.1 meant that general statutes giving authority to employers are not to be read as shields to the employer's obligation to negotiate regarding terms and conditions of employment, but specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations.

The Commission further reiterated its position that it was the legislative intent, in part, in enacting Chapter 123, and more specifically the amendments to Section 8.1, to enlarge the jurisdiction of the grievance/arbitration process to be co-extensive with the scope of those matters which could be negotiated and incorporated into a collectively negotiated agreement, including mandatory as well as permissive subjects of negotiations. Thus, in a dispute arising from a contract entered into after the effective date of Chapter 123, if the matters in dispute concern either permissive or required subjects of negotiations, then they are considered by the Commission to be arbitrable if otherwise arbitrable under the parties' agreement.

In addition, in rejecting the Education Association's contention that the Commission should categorize a specific issue as a required subject of collective negotiations if it is significantly related to wages, hours and other terms and conditions of employment, the Commission emphasizes that it has applied a balancing test in determining whether a particular subject is a mandatory or permissive subject for collective negotiations. In the educational sphere, major educational policies which may only indirectly affect terms and conditions of employment of teachers are deemed to be only permissive subjects for collective negotiations although the impact or effect, if any, of the decisions on terms and conditions of employment is mandatorily negotiable. On the other hand, issues which are not predominantly educational policies and which directly affect the financial and personal welfare of teachers are required subjects for collective negotiations. This balancing of the element of educational policy relating to a matter in dispute against the effect that that subject has on a teacher's employment recognizes that public employers and employee representatives both have significant interests at stake and that these competing interests must be carefully weighed to determine how a proposed subject for negotiations should be classified.

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Appearances:

For the Ridgefield Park Board of Education, Pachman
and Aron, Esqs. (Mr. Lester Aron, of Counsel)

For the Ridgefield Park Education Association, Goldberg,
Simon & Selikoff, Esqs. (Mr. Theodore M. Simon, of
Counsel)

For the New Jersey School Boards Association, Amicus
Curiae, Mr. William J. Zaino and Mr. John T. Barbour
(Mr. John T. Barbour, on the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination,
Docket No. SN-76-29, was filed with the Public Employment Relations
Commission (the "Commission") on December 18, 1975 by the Ridgefield
Park Board of Education (the "Board") seeking a determination as
to whether certain disputed matters which the Ridgefield Park
Education Association (the "Association") sought to submit to
arbitration were within the scope of collective negotiations.^{1/}

^{1/} The Commission's authority to determine whether a matter in
dispute is within the scope of collective negotiations appears
(Continued)

Simultaneously, the Board sought a temporary restraint of arbitration from the Commission during the pendency of this matter.

By motion dated February 10, 1976, the New Jersey School Boards Association sought and by order dated March 4, 1976 was granted permission to intervene in this matter as amicus curiae. The amicus filed a brief regarding the disputed items.

The dispute revolved around the development and adoption of the "Ridgefield Park Professional Development and Evaluation Program" (the "Program"). The Program is divided into five basic sections: 1) Board Policy Statement for Teacher Evaluation, 2) District Goals, 3) Index for Teacher Effectiveness, 4) Summative Evaluation, and 5) Formative Evaluation. In its Petition and brief, the Board maintained that the first three sections involve matters of major educational policy and it resisted any attempt to submit to arbitration the matters contained therein. The Board did not seek a scope determination or a restraint with respect to the final two sections of the Program, stating that they relate primarily to the procedural aspects of the evaluation of teachers within the district and apparently conceding that they are thus required subjects for collective

1/ (Continued) at N.J.S.A. 34:13A-5.4(d): "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The Commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

negotiations.^{2/}

The Board and the Association were parties to a collective negotiations agreement which covered the period from July 1, 1974 to June 30, 1976. Article IV of the agreement was a grievance procedure culminating in binding arbitration. The issue before the Commission was whether or not the first three sections of the program were within the scope of collective negotiations.

The Association opposed the request of the Board for an order preliminarily enjoining and restraining arbitration of the first three sections of the Program during the pendency of this matter. Nevertheless, on May 13, 1976, the Commission's Executive Director^{3/} issued an Interlocutory Decision and Order, P.E.R.C. No. 76-37, 2 NJPER (1976) which, inter alia, restrained arbitration of the disputed matters until further order of the Commission.

The Association never filed a brief with respect to this matter. However, by letter dated July 19, 1976, a copy of which was served on the Commission, the Association advised the Board that it was withdrawing its request for arbitration concerning the

^{2/} This is consistent with the position taken by the Commission on such matters. See In re County College of Morris, P.E.R.C. No. 77-64, 3 NJPER (1977); In re Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976), rev'd on other grounds, App. Div. Docket No- A-3018-75 (1977); In re Plainfield Board of Education, P.E.R.C. No. 76-45, 2 NJPER 216 (1976), (appeal dismissed by stipulation) Docket No. A-4378-75; In re Wyckoff Board of Education, P.E.R.C. No. 77-41, 3 NJPER (1977); and City of Camden Board of Education v. Camden Education Association, Docket No. C-1681-75, decided August 4, 1976, wherein Judge Devine, sitting as Chancery Judge for Camden County, refused to restrain an arbitration because the subject matter concerned teacher evaluation procedures.

^{3/} Now Chairman, Jeffrey B. Tener.

three disputed sections of the Program. At the same time, the Association advised the Board that the Association had not abandoned its claim that item 3, "Index for Teacher Effectiveness" (the "Index") was mandatorily negotiable and the Association demanded negotiations with respect to that matter for the successor agreement for the 1976-77 school year. Knowing that it was the Board's position that this matter was not within the scope of negotiations, the Association filed a Petition for Scope of Negotiations Determination, Docket No. SN-77-2 on July 21, 1976 with the Commission. On August 20, 1976 the Association filed its brief in support of the petition. Subsequently, reply briefs were filed by both the Board and the Amicus Curiae, the last of which was received on January 3, 1977.

These petitions having been consolidated by letter order dated August 23, 1976, the Commission will consider the issue of the negotiability of the "Index for Teaching Effectiveness", the only disputed issue before the Commission at this time. The Association is seeking to negotiate regarding this matter in the context of negotiations for an agreement to succeed the agreement which expired on June 30, 1976. Therefore, the dispute is governed by the provisions of Chapter 123, P.L. 1974. See Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (App. Div., May 5, 1976, unreported). In rendering this determination, we have examined both briefs which were submitted by the Board and the Amicus Curiae as well as the one brief filed by the Association.

The "Index for Teacher Effectiveness" is six-pages in length and, as stated, is a part of more comprehensive "Professional Development and Evaluation Program." A copy of the Index is attached as an appendix to this decision.

The Board and the amicus maintain that the matters contained within the Index reflect major educational policy decisions of the Board, relating to the quality of performance that the Board requires of its professional personnel which will have a direct and substantial impact upon the quality of educational services provided to its students, and are thus outside the scope of collective negotiations. The briefs of the Board and the amicus emphasize that the Board's adoption of the Professional Development and Evaluation Program, and more specifically, the Index for Teacher Effectiveness, was in furtherance of the Board's responsibility to provide for a "through and efficient" system of free public schools in Ridgefield Park. As such, it is argued, the substantive matters contained within the Index have been elevated beyond normal educational policy to matters approaching Constitutional dimension. (See New Jersey Constitution of 1947 -- Article 8, Section 4, Paragraph 1; and the Public School Education Act of 1975, N.J.S.A. 18A:7A-1 et seq., Chapter 212, Public Laws of 1975 [hereinafter the "Education Act of 1975"].

The Board and the amicus submit that Chapter 123, Public Laws of 1974 changed only the initial forum for deciding questions of negotiability from the state judiciary to the Commission, but left unchanged the criteria or standards to be applied in rendering

negotiability determinations that had previously been established by the New Jersey Supreme Court in a line of cases referred to as the Dunellen trilogy.^{4/} It is contended that a proper application of the Dunellen rationale would mandate the conclusion that the Board was not required to enter into negotiations relating to the aforementioned Index which deals with matters predominately of educational policy, management prerogatives, and/or the statutory duties of the Board under Title 18A.

The Board refers to the Index as a list which contains the substantive criteria against which teacher performance will be evaluated and that relates to the most important policy decisions a board of education is empowered to make, i.e., how the quality of a teacher's performance can be gauged for purposes of determining whether an individual's employment contract should be renewed, whether a teacher is entitled to a salary increment, whether an individual is entitled to a promotion or sabbatical leave, et cet. The Board concludes that to grant to the Association the right to negotiate regarding substantive criteria utilized by the Board to make decisions relating to the granting or denial of tenure or with regard to the withholding of increments would be to delegate to a private interest group the very quality of education to be provided, thus undermining the essence of public education in the State, while usurping the statutory functions delegated to

^{4/} Dunellen Bd. of Ed. v. Dunellen Ed. Assn., 64 N.J. 17 (1973); Bd. of Ed. of City of Englewood v. Englewood Teachers Assn., 64 N.J. 1 (1973); Burlington County College Faculty Association v. Bd. of Trustees, Burlington County College, 64 N.J. 10 (1973).

the Board as the representative of the public.

The Association contends that the Index for Teacher Effectiveness, insofar as it enunciates the criteria to be applied by the Board in evaluating teacher performance for the purpose of making employment decisions relating to a teacher's job security, tenure attainment, and salary and work assignments, has a direct and substantial effect on terms and conditions of employment and so is a proper subject for required negotiations. The Association emphasizes that what is sought are mandatory negotiations on the guidelines under which existing employment will continue without some form of disciplinary or other negative action being taken.

The Association submits that the 1974 amendments to the Act /Chapter 123, Public Laws of 1974, and more specifically the amendment to N.J.S.A. 34:13A-8.1, undercut any statutory basis that existed for a restrictive interpretation of the concept of negotiability in the public sector in New Jersey. The Association, moreover, argues that given the legislative policy declarations contained in N.J.S.A. 34:13A-2 and the judicial mandate that denies public employees the right to strike, it is necessary to view the concept of required subjects for negotiations expansively in order to provide "fundamental and desperately needed protection of public employees' negotiations rights."

The Association concludes that the appropriate standard for a determination as to whether a particular issue is a required subject for collective negotiations involves a consideration of

the effect of that issue on terms and conditions of employment -- the application of which in the instant case would mandate the conclusion that the Index is a required subject for collective negotiations.

Before specifically determining whether the Index is a required, permissive, or illegal subject for collective negotiations, certain positions taken by the parties in support of their respective contentions should be analyzed in light of specific Commission decisions.

The Board and amicus place considerable reliance on certain broad grants of authority allocated to local boards of education relating to the hiring, training, evaluation, and dismissal of teaching personnel, memorialized within sections of the Public Education Act of 1975 [an Act which implemented Article 8, Section 4, Paragraph 1 of the New Jersey Constitution of 1947 which provided that the Legislature should provide for the maintenance and support of a "thorough and efficient" system of free public education], in support of their position that the Index for Teacher Effectiveness reflects the Board's policy statement on a matter of major educational concern which was reserved to the Board by the aforementioned statutory enactment.

Consideration of this position requires an analysis of the significance of the statutory amendments to N.J.S.A. 34:13A-8.1 as set forth in Chapter 123, Public Laws of 1974. Prior to the passage of Chapter 123, N.J.S.A. 34:13A-8.1 had stated, in apposite part, that no provision of the Act shall "...annul or modify any

statute or statutes of this State." Section 6 of Chapter 123 deleted this language and substituted: "...nor shall any provision hereof annul or modify any pension statute or statutes of this State." (emphasis added)

In two recent decisions,^{5/} the Commission concluded that the amendment to Section 8.1 did not constitute an implied repealer of statutes dealing with terms and conditions of employment, but that it was intended to remove any doubt regarding the negotiability of terms and conditions of employment in those areas within the authority of the employer and to compel negotiations concerning such matters. In practical terms this means that parties are required to negotiate regarding terms and conditions of employment and may conclude a collective negotiations agreement thereon, but they may not, even mutually or bilaterally, agree to modify or contravene statutes that have specifically limited the authority or discretion of a public employer. The Commission held:

"that the parties in a bargaining relationship were permitted and required when concerning mandatory subjects/ to negotiate regarding, inter alia, terms and conditions of employment even if statutory language existed on the subject matter, but only to the extent that the negotiations did not modify or contravene statutes that have specifically limited the authority of the public employer on the subject." In re State of New Jersey (Local 195), supra, at p. 17.

The Commission concluded its review of the amendments to

^{5/} In re State of New Jersey (Local 195), P.E.R.C. No. 77-57, 3 NJPER ___ (1977), appeal pending Docket No. A-3809-76, and In re State of New Jersey (State Supervisory Employees Association, P.E.R.C. No. 77-67, 3 NJPER ___ (1977).

Section 8.1 and held that:

"the change in N.J.S.A. 34:13A-8.1 means that general statutes giving authority to employers are not to be read as shields to the employer's obligation to negotiate regarding terms and conditions of employment, but specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations." In re State of New Jersey (Local 195), supra, at p. 18. ^{6/}

Reading the Public Education Act of 1975 in pari materia with the New Jersey Employer-Employee Relations Act, the Commission determines that nothing within the Public Education Act of 1975 in and of itself prohibits negotiations between a board of education and the exclusive representative of its professional staff relating to a list of substantive criteria against which teacher performance is measured -- the essence of the Index for Teacher Effectiveness. The Public Education Act of 1975 in the broadest possible terms delegates to local school districts the authority and indeed the obligation to establish local educational plans, goals and standards to implement a thorough and efficient system of free public education. To read these broad, general grants of authority as specific shields to an employer's obligation to negotiate regarding terms and conditions of employment would be to misconstrue the purposes behind both the Education Act and the New Jersey Employer-Employee Relations Act as well as to ignore the

^{6/} Cf. Teamsters Local 866 v. Lodi Board of Education, Superior Ct., Ch. Div., Bergen County, Docket No. C-2409-74, Gelman, J.S.C., (February 11, 1977) and PLRB v. School District (Pennsylvania Supreme Court, Eastern District, 90 LRRM 2081 (1975)).

words of both statutes.

A second point to be raised at this time relates to the Association's arguments concerning the effect of the Chapter 123 amendments to N.J.S.A. 34:13A-8.1 and the standards to be applied in general in determining whether particular issues are within the scope of collective negotiations. The Association contends that the amendments to Section 8.1 clearly undermined any basis that existed for a restrictive, "conservative" interpretation of the concept of negotiability as set forth by the New Jersey Supreme Court in its Dunellen trilogy. Furthermore, the Association submits that a "significant relation" standard^{7/} should be applied by the Commission in rendering scope of negotiations determinations in part because of the changes effected in Section 8.1.

The Commission in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976), determined that it was the legislative intent, in part, in enacting Chapter 123, and more specifically the amendments to Section 8.1, to enlarge the jurisdiction of the grievance/arbitration process to be co-extensive with the scope of those matters which could be negotiated and incorporated into a collectively negotiated agreement, including mandatory as well as permissive subjects of

^{7/} This standard categorizes a specific issue as a required subject of collective negotiations if it is significantly related to wages, hours and other terms and conditions of employment.

negotiations.^{8/} Thus, in a dispute arising from a contract entered into after the effective date of Chapter 123, if the matters in dispute concern either permissive or required subjects of negotiations, then they are considered by the Commission to be arbitrable if otherwise arbitrable under the parties' agreement.^{9/} The Commission interpreted the amendments to Section 8.1 as signifying a legislative reaction to the restrictiveness of the standards enunciated by the New Jersey Supreme Court in Dunellen with reference to the scope of collective negotiations as well as arbitration. The Commission has determined that public employers and employee representatives in the public sector can legally enter into enforceable agreements, subject to arbitration and/or judicial enforcement,^{10/} with reference to matters that might well

^{8/} 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 Board of Education of the City of Trenton, E.D. No. 76-11, 1 NJPER ____ (1975), footnote 1, pp. 4 and 5 and In re City of Jersey City, P.E.R.C No. 77-33, 3 NJPER ____ (1977).

^{9/} In a scope of negotiations proceeding the Commission addresses the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. In this type of proceeding the Commission will not determine whether the facts are as alleged by the grievant, whether the contract provides any defenses to the employer's alleged action, or even whether there is a valid arbitration clause in the parties' agreement. These are questions appropriate for determination by an arbitrator and/or the courts. In re Hillside Board of Education, P.E.R.C. No. 76-16, 2 NJPER 49 (1976).

^{10/} It should be noted that when a permissive subject is included in an agreement the Commission does not attempt to exercise authority over its enforcement. The Commission's only involvement is to pass upon its negotiability and arbitrability in scope proceedings when such a dispute arises. In such cases, with regard to

(Continued)

have been deemed to be managerial prerogatives, and thus ultra vires and unenforceable even if included in an agreement between the parties, by the New Jersey Supreme Court in Dunellen.

The Commission, however, has not interpreted the amendments to Section 8.1 as a legislative signal to adopt a standard for scope determinations such as the aforementioned "significant relation" standard. The Commission in its scope determinations has not adopted the approach that a given subject is mandatorily negotiable if it is significantly related to wages, hours and other terms and conditions of employment. We have decided that this "significant relation" standard is inadequate because it does not properly recognize the competing interests at stake where there is an overlap between conditions of employment on the one hand and management prerogatives on the other. By focusing on only one half of this overlap situation, this standard would give undue, if not exclusive, weight to terms and conditions of employment.

Instead, the Commission has applied a balancing test in determining whether a particular subject is a mandatory or permissive subject for collective negotiations. This pragmatic test openly acknowledges that there may be an overlap between terms and conditions of employment and certain management prerogatives

10/ (Continued) Chapter 123 contracts, the Commission only goes so far as to indicate that the matter is permissively negotiable and therefore the Commission will not restrain arbitration. See e.g. In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977) and In re Piscataway Township Board of Education, P.E.R.C. No. 77-65, 3 NJPER ____ (1977), appeal pending, App. Div. Docket No. 3631-76.

which requires a careful consideration of the competing interests at issue. In the educational sphere, for example, the Commission has recognized the continuing viability of a balancing test similar to that enunciated by the Supreme Court in Dunellen in determining whether a particular subject was a required or permissive subject for collective negotiations. Major educational policies which may only indirectly affect terms and conditions of employment of teachers are deemed to be only permissive subjects for collective negotiations although the impact or effect, if any, of the decisions on terms and conditions of employment is mandatorily negotiable. On the other hand, issues which are not predominantly educational policies and which directly affect the financial and personal welfare of teachers are required subjects for collective negotiations. In making these statements, we believe it is important to note that the basic negotiations obligation set forth in the Act in 1968 has not been altered by statutory amendment. That obligation then as now is as follows:

"...Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment.

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative..." (Emphasis added)
N.J.S.A. 34:13A-5.3.

It is evident that the lines between required and permissive subjects of collective negotiations are often obscure. In

educational matters the Commission carefully considers how direct the impact or effect of a particular issue in dispute is on the working conditions of individual teachers, as opposed to its effect on the operation of the school system as a whole. This balancing of the element of educational policy relating to a matter in dispute against the effect that that subject has on a teacher's employment recognizes that public employers and employee representatives both have significant interests at stake and that these competing interests must be carefully weighed to determine how a proposed subject for negotiations should be classified.

To illustrate how the Commission has utilized this framework for analysis in its scope determinations, two specific Commission decisions may be cited. In In re Township of Little Egg Harbor, P.E.R.C. No. 76-15, 2 NJPER 5 (1976), the Commission determined that, on the facts in that case, the issue of subcontracting garbage collection services performed by the township sanitation department to a private scavenger service was a required subject for collective negotiations. It was recognized by the Commission that the subcontracting decision related to the manner in which the township's essential services were provided to the public and that the decision to subcontract was motivated by fiscal considerations, i.e., the need for a substantially increased outlay for capital improvement relating to garbage collection equipment and landfill facilities if services were to be continued to be provided by the local sanitation department. However, the Commission weighed the effect of the township's decision to subcontract on

the governance of the municipality and the township's ability to manage its affairs against the effect of that decision on the affected employees' terms and conditions of employment, i.e., a significant impairment of job tenure, employment security and anticipated work opportunities for all the members of the sanitation department, and determined that on balance the decision to subcontract was a required subject for negotiations.^{11/}

In contrast, in In re North Plainfield Board of Education, P.E.R.C. No. 76-16, 2 NJPER 49 (1976), the Commission determined that the decision of the board to eliminate a writing conference taught by English teachers^{12/} and to provide instead that English teachers teach a fifth classroom teaching period each day in its place was a basic educational policy decision not subject to the mandatory duty to negotiate. It was evident to the Commission that although the work day of the employees was not lengthened, teacher workload, a required subject for collective negotiations, could be affected by the implementation of that decision. The Commission, in evaluating the competing interests, determined that the decision was not a required subject for collective negotiations, despite its potential impact on terms and conditions of employment of the teachers, but ordered the board to negotiate the impact or effect upon terms and conditions of employment of the decision to

^{11/} We draw attention to our often stated reminder that good faith negotiations does not compel either party to make a concession. State v. Council of N.J. State College Locals, 141 N.J. Super 470 (App. Div. 1976) affirming E.D. No. 79, 1 NJPER 39 (1975).

^{12/} The writing conference entailed interaction with only one student per conference.

substitute an additional classroom teaching period for a writing conference with the majority representative of the teachers.^{13/}

Returning to the matters at issue, we have carefully examined the Index for Teacher Effectiveness and the briefs submitted by the parties to this proceeding. We conclude, upon application of the aforementioned balancing test, that the development of this Index relates to a basic educational policy decision that concerns the manner and the means of providing educational services to students and thus is not subject to mandatory negotiations. We find that the Board is not required to negotiate regarding the general criteria contained in the Index, e.g. the degree to which teaching is planned, efficiently organized, and designed to meet individual needs; a teacher's ability to motivate; the materials and resources utilized by teaching personnel; relationships with pupils, parents and staff; the ability to maintain

^{13/} As part of its balancing test the Commission has recognized that certain decisions, e.g. table of organization, In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976)/ class size, In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976)/ and qualifications for promotion In re Byram Township Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143, 145 (1976), affirmed as modified, App. Div., June 16, 1977/ are not themselves terms and conditions of employment but rather go to the foundation of an employer's mission or manner of providing essential services. Therefore, these decisions have not been held to be mandatorily negotiable. At the same time, it is evident that these decisions do or may have an affect on an employee's terms and conditions of employment. Thus, the Commission has required negotiations between the parties regarding the implementation of these decisions to the extent that these decisions have an affect on terms and conditions of employment. For example, class size may well affect the workload of a teacher and workload has been found to be mandatorily negotiable. Similarly, because promotions, at least within the unit, affect employees' terms and conditions of employment, the Commission has required negotiations regarding promotional procedures In re Byram Township Bd. of Ed., supra. but not the qualifications for employment. The Commission notes that on June 16, 1977, the Appellate Division issued the decision in Byram, supra and that the analysis of the Commission herein is totally consistent with that decision.

discipline; and delineated personal qualities⁷ utilized by the Board in determining whether teachers within the district are performing at levels deemed necessary by the Board to fulfill the educational mission of the school system, for purposes of according tenure, granting salary increments and the evaluation of staff development.

The Commission concludes, however, that in the absence of any specific statutory proscription, nothing would preclude the parties from negotiating about the Index in the future, i.e., it is a permissive subject of negotiations. Moreover, the implementation of this Index may well affect terms and conditions of employment. Workload, for example, may be affected by such a decision. To this extent, the impact of such a decision upon terms and conditions of employment is a required subject of negotiations. That, however, does not appear to be disputed by the Board and is not at issue.

In determining that the decisional aspects of the implementation of the Index is not a required subject for collective negotiations, the Commission has carefully weighed certain countervailing considerations.

The Commission first notes that it is uncontroverted that a committee of Ridgefield Park staff personnel spent two years working on the Professional Development and Evaluation Program, in part covering the Index for Teacher Effectiveness. A draft of proposed recommendations emanating from the committee relating to the total evaluation process, including the Index, was circulated

to the entire teaching staff for its criticism and recommendations. The "acknowledgments" section of the Ridgefield Park Professional Development and Evaluation Program states specifically that suggestions were received from a committee of the Association. It is thus apparent that through a process in part akin to collegiality,^{14/} the Board has permitted employee participation relating to the development of the Index.^{15/}

The Commission further notes that the Board has conceded that all procedural aspects of the evaluation process as set forth in the formative evaluation and summative evaluation sections of the Professional Development and Evaluation Program are required subjects for collective negotiations, in conformity with Commission decisions.^{16/} More specifically, procedures in the formative and summative evaluation sections relate to how the actual evaluation process should be conducted, who shall be evaluated, the format of these evaluations, and the identification of the evaluator. These particular matters go to the reasonable expectation of teachers to notice of what is expected of them to be able to attain

^{14/} For a discussion of the juxtaposition of the concepts of collegiality and collective negotiations, see In re Rutgers, The State University, supra. As pointed out in that decision the Commission believes that a system of collegiality does not require a public employer's relationship with an exclusive representative of its employees to go beyond grievances and terms and conditions of employment.

^{15/} We note that the administrative rules implementing the Public School Act of 1975 now mandates such participation by teaching staff members, among others. N.J.A.C. 6:8-3.1.

^{16/} See note 2.

job security, to have adequate notice of the deficiencies which may threaten that security, and the right to have input into procedures such as the timing and manner of observation which might impair that job security. No inherently managerial prerogatives are touched by these sections of the Evaluation Program.^{17/}

Lastly, with reference to the expressed fears of the Association that the application of the Index to individual cases may be arbitrary and capricious, we note that we have recently interpreted the New Jersey Employer-Employee Relations Act as requiring the inclusion in all agreements of grievance procedures which permit an appeal of the interpretation, application or violation of policies, agreements and administrative decisions

^{17/} Title 18A mandates certain protections for teachers that serve to complement and/or supplement the procedures set forth in the formative and summative evaluation sections of the Evaluation Program. The specific procedure for the selection of tenured teachers to be terminated when a reduction in force occurs and their reemployment rights is set forth in N.J.S.A. 18A:28-9 through N.J.S.A. 18A:28-14. N.J.S.A. 18A:27-10 and 27-11 requires that non-tenured teachers be noticed of their non-reemployment by April 30th of each year or they are deemed to have been offered a contract.

The decision of the New Jersey Supreme Court in Donaldson v. Board of Education of City of North Wildwood, 65 N.J. 236 (1974) that a non-tenured teacher was entitled, upon request, to receive a statement of reasons for non-retention and to an informal appearance before a board of education enunciated another limitation on the general authorities of a board in personnel matters which stemmed from a source outside Title 18A. This decision has now been formalized in a statute, P.L. 1975, c. 132, now N.J.S.A. 18A:27-3.1 to 3.3; and regulations, N.J.A.C. 6:3-1.

affecting public employees.^{18/} Additionally, the Commissioner of Education has certain statutory jurisdiction with respect to such matters. Cf. N.J.S.A. 18A:6-10 et seq.

The above-mentioned factors were all considered in the determination that the decision to adopt the Index for Teacher Effectiveness does not relate to a required subject for collective negotiations.

ORDER

In accordance with the above discussion and pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7 the Ridgefield Park Education Association is hereby ordered to refrain from insisting, to the point of impasse, upon the inclusion of the Index for Teacher Effectiveness in negotiations with the Ridgefield Park Board of Education.

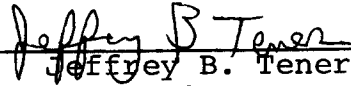
To the extent that the Ridgefield Park Board of Education has not negotiated the effect or impact on employees' terms and conditions of employment of its decision to adopt the Index for Teacher Effectiveness or has not otherwise met its negotiations obligation with respect thereto, the Board is hereby ordered to

^{18/} In re P.B.A. Local #130, P.E.R.C. No. 77-59, 3 NJPER ____ (1977), appeal pending, App. Div. Docket No. A-3634-76. /See also N.J.S.A. 34:13A-5.3/.

The Commission did point out in this decision that there was not a statutory requirement that all grievances follow the same route. It was anticipated that parties will comply with the Commission's decision, if affirmed on appeal, in many cases by negotiating a two-pronged grievance procedure: one perhaps ending with binding arbitration as a means of resolving contractual disputes and the other perhaps culminating in an advisory procedure, or with the public employer, regarding all other types of grievances.

negotiate in good faith upon demand of the Ridgefield Park Education Association.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.
Commissioner Hipp abstained.
Commissioner Hurwitz was not present.

DATED: Trenton, New Jersey
June 21, 1977
ISSUED: June 22, 1977

APPENDIX

INDEX FOR TEACHER EFFECTIVENESS

The following is not a checklist. All such district standards and expectations for staff are tempered by other variables: class size, range of student abilities, availability of resources, etc.

A. Instructional Skills

1. Planning and organization (Degree to which teaching is planned and efficiently organized; provides learning experiences which are based upon needs, interests, and abilities of individual learners.)
 - a. Exhibits a thorough knowledge of subject matter.
 - b. Exhibits objectives for instructional activities.
 - c. Makes realistic provisions for differences in abilities.
 - d. Plans and provides for involvement of students in planning, selection, and evaluation of program wherever possible.
 - e. Wherever applicable, adjusts physical arrangements and modifies noise levels.
 - f. Establishes routine for daily planning.
 - g. Establishes teaching objectives which include consideration of school and district goals.
 - h. Adopts principles of growth and development to the planning of learning activities.
2. Appropriateness of materials (Compatibility of instructional materials with course of study; adaption of materials and methods to levels of learning ability of pupils.)
 - a. Wherever possible individualizes instruction according to the learning style of each pupil.
 - b. Uses prompt and frequent feedback to make learning tasks meaningful.
 - c. Consults specialists for materials suitable for the exceptional learner.
 - d. Brings to classroom related sources and materials beyond the classroom resources.
3. Resourcefulness and adaptability (Use of creative methods and procedures)
 - a. Utilizes variety of classroom activities.
 - b. Selects and uses a wide variety of instructional materials.
 - c. Provides opportunities for creative expression.
 - d. Conducts effective discussion.
 - e. Wherever possible provides opportunities for outside participation.
 - f. Uses evaluation techniques to improve teaching-learning experiences.

- g. Assists the learner in assuming an increasingly important role in the evaluation of his own growth and development.
- h. Provides opportunities for students to develop qualities of leadership and self direction.
- k. Wherever possible, plans learning activities to utilize community resources.

4. Ability to motivate (Evidence of skill in drawing out pupils and getting them to achieve at their level of ability and potential.)

- a. Uses a variety of classroom activities.
- b. Varies assignments according to student needs.
- c. Draws on a background of study and experience to enrich the cultural growth of students.
- d. Whenever possible, provides opportunities for student expression of self in music, drama, other artistic forms.
- e. Solicits and accepts feedback from students
- f. Inspires students to participate in discussion and activities.
- g. Conveys a sense of enthusiasm.
- h. Helps pupils believe that they should try harder to achieve.
- i. Helps pupils experience social and intellectual satisfaction in association with each other.
- j. Helps the student see the subject matter and school achievement all relevant to his life outside the school.
- k. Motivates differentially according to differences that exist from child to child and in the same child from time to time.
- l. Uses positive motivation when appropriate.

5. Uses resources

- a. Makes adequate use of specialist and consultant services.
- b. Seeks helpful materials from resource centers
- c. Uses audio-visual aids effectively.

6. Classroom techniques (Art of questioning, clarity of assignments, reaction to pupil response, utilization of interests and contributions of pupils.)

- a. Helps students share responsibility for carrying out classroom procedures.
- b. Varies learning activities so that all students become participants.
- c. Communicates, as needed, with students individually or in small groups
- d. Questions vary in type and difficulty for different students to make sure that each student understands.

- e. Questions frequently are open-ended rather than questions with "right" answer.
- f. Adopts role of resource person and helper with student contributing to content and direction.
- g. Changes classroom organization consistent with learning needs.
- h. Sets an atmosphere of mutual respect of opinions between teacher and student.
- i. Acts as conveyor of information only as needed, using lecturing when appropriate.
- j. Provides time and opportunity for students to think or speculate and to make use of results.
- k. Provides opportunity for student to learn how and when to work independently.
- l. Provides for unusual ideas being entertained with respect.
- m. Encourages student - student communication as well as student - teacher communication.
- n. Encourages group cohesiveness.

7. Parent relationships (Skill in working cooperatively with parents; is tactful, yet frank.)

- a. Accepts parental visits to classroom.
- b. Conducts parent conferences with skill.
- c. Confers with individual parents regarding their child's work and development.
- d. Interprets school policies and goals to give parents better understanding.
- e. Maintains communications with parents about students within administration guidelines.

A. Management Ability

1. Relationships with pupils (Works with class as a unit and with pupils as individuals.)

- a. Demonstrates a concern for students.
- b. Offers an open atmosphere in which others feel free to express themselves.
- c. Assists students in defining realistic goals for himself and encourages high performance from individuals consistent with their ability.
- d. Directs students to sources of information on vocational opportunities and careers.
- e. Accepts personal problems or handicaps with consideration, understanding and sympathy.
- f. Finds opportunity for each student to make some worthwhile contributions to class groups.
- g. Uses all available resources such as pupil-personnel services and child study teams.

2. Discipline (Promotes efficient and constructive behavior patterns on part of the students and handles behavioral problems individually when possible.)
 - a. Maintains an effective balance of freedom and security in the classroom. Follows and expects students to use appropriate procedures which show consideration for rights of others.
 - b. Maintains good but professional rapport with the students.
 - c. Attempts to help individual students change undesirable attitudes to desirable ones.
 - d. Recognizes, analyzes and attempts to correct causes of group or individual unrest.
 - e. Develops responsible student leadership and fellowship.
 - f. Shows consistency and fairness in dealing with pupils.
 - g. Generates warmth and understanding in the establishment of reasonable limits of behavior.
 - h. Utilizes the discipline procedures for his building.

3. Personal efficiency (Evidence of management skills, attention to details, planning fulfillment of assignments, skill in care and use of materials and equipment, record keeping, attention to physical characteristics and appearance of classroom, etc.)
 - a. Plans and fulfills all assignments (has organized work plans)
 - b. Shows skill in care and use of materials and equipment.
 - c. Maintains accurate pupil records.
 - d. Directs attention to physical conditions and appearance to classroom with specific reference to health and safety.
 - e. Plans and organizes classes and work so that a substitute teacher can take over in case of absence with a minimum of interruption of learning to the student.

C. Professional Responsibility

1. Commitment (Pride in teaching as a profession)
Communicates in a professional manner with the community about school and district.

2. Staff relations (Respects opinions of others; cooperates with total operation of the school; seeks and offers assistance when needed.)
 - a. When necessary, consults with others including team teachers and/or specialists.
 - b. Works with colleagues to evaluate the total program effectiveness.

- c. Shares ideas, materials and methods with other teachers.

3. Out-of-class responsibilities

- a. Carries a fair share of out-of-class responsibilities during the school day.
- b. Supervises hallways and other areas where necessary.
- c. Is prompt in arrival at school and classes and observes other required time schedules.
- d. Accepts responsibility for the general welfare of the school.

4. Ethics (Conducts self according to professional ethical standards)

- a. Observes school policies and legal regulations.
- b. Handles personal information and records in a discreet manner.

5. Professional growth (Is continually striving to improve in his classroom methods, teaching techniques, and recognizes a need to evaluate his professional performance)

- a. Uses published materials pertinent to the profession and/or specific subject areas to improve instruction.
- b. Participates in conferences supportive to instructional responsibilities during the school work day.
- c. Seeks district services available for instructional support.
- d. Applies knowledge gained from travel, course work, reading, and other enrichment activities.
- e. Seeks to find better methods of teaching through professional conferences or reading, supervisory help or evaluation of teaching results.

D. Personal Qualities

1. Appearance and manner

Dresses and maintains a general appearance that is suitable to the school's standards.

2. Speech (Enunciation, pronunciation, modulation, correctness of speech)

- a. Oral speech habits include good usage of English and pronunciation.
- b. Written communications for pupils, parents or any professional purpose are in good form showing correct spelling, grammar and handwriting.
- c. Vocally expresses ideas clearly.

3. Attitude (Is constructive, contributing member of staff, sense of humor, sense of fair play, enthusiastic about his work, etc.)

- a. Utilizes such human relation techniques as acceptance, praise and humor when warranted.
- b. Acknowledges the rights of others to hold views different than his own.
- c. Believes that every individual is of infinite worth and must be helped to grow in the degree necessary to participate in our society.

4. Judgement

- a. Responds positively to challenges.
- b. Copes objectively with the expression of frustration on the part of the children or parents.
- c. Adjusts to constantly changing conditions.
- d. Is calm and mature in his reactions (has self-control; able to cope with the unexpected; responds positively to constructive criticism)
- e. Puts problems in perspective.
- f. Listens and responds to the concerns of others.