

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST BRUNSWICK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-25

EAST BRUNSWICK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations decision, the Commission determines the negotiability of numerous contract articles in dispute between the Board and the Association which relate to dismissal, assignments, promotions, transfers, and evaluations. The Commission reviews each of the disputed proposals as it relates to tenured, non-tenured, and non-professional employees of the Board, all of whom are represented by the Association. Also considered is the possible preemptive effect of various provisions of the education laws (N.J.S.A. Title 18A) and State Board of Education regulations.

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Appearances:

For the Petitioner, Carroll, Panepinto, Pachman,
Williams & Paolino
(Martin R. Pachman, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld
(Nancy Iris Oxfeld, of Counsel)

DECISION AND ORDER

On October 27, 1980, the East Brunswick Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination seeking a ruling from the Public Employment Relations Commission as to whether certain holdover provisions in an existing contract are mandatory subjects of collective negotiations for a successor agreement between the Board and the East Brunswick Education Association (the "Association"). The proposals relate to procedures for dismissal, assignments, promotions, transfers and employee evaluations. Briefs were filed by both parties.

The Board maintains that the sections in dispute are either non-negotiable managerial prerogatives or are preempted by statute or administrative regulations. The Association maintains

that each provision is mandatorily negotiable and properly included in the current collective negotiation agreement and its successor.

The Supreme Court in State v. State Supervisory Employees, 78 N.J. 54 (1978), described the types of statutes and regulations which would proscribe negotiations over a term or condition of employment:

It is implicit in the foregoing that statutes or regulations concerning terms and conditions of public employment which do not speak in the imperative but rather permit a public employer to exercise a certain measure of discretion, have only a limited preemptive effect on collective negotiation and agreement. Thus, where a statute or regulation mandates a minimum level of rights or benefits for public employees but does not bar the public employer from choosing to afford them greater protection, proposals by the employees to obtain that greater protection in a negotiated agreement are mandatorily negotiable. A contractual provision affording the employees rights or benefits in excess of that required by a statute or regulation is valid and enforceable. However, where a statute or regulation sets a maximum level of rights or benefits for employees on a particular term and condition of employment, no proposal to affect that maximum is negotiable nor would any contractual provision purporting to do so be enforceable. Where a statute sets both a maximum and a minimum level of employee rights or benefits, mandatory negotiation is required concerning any proposal for a level of protection fitting between and including such maximum and minimum.
78 N.J. at 81-82.

Under Bethlehem Twp. Board of Education, P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), affm'd App. Div. Docket No. A-

4582-78 (2/19/81), there is no question that the State Board of Education's administrative regulations are subject to analysis under the standards set out in State Supervisory Employees. The following statutes and regulations apply in pertinent part to the instant matter and are attached hereto as Appendix A: N.J.S.A. 18A:27-3.1; 3.2; N.J.S.A. 18A:28-8; N.J.A.C. 6:3-1.19 and N.J.A.C. 6:3-1.21. A copy of the disputed contract provisions is attached hereto as Appendix B.

The Association represents most employees of the Board (including teachers, other professionals, cafeteria and maintenance workers). The Board argues that the disputed contract provisions are either non-negotiable management prerogatives or preempted by specific sections of the Education Law and administrative regulations applicable to teaching staff as defined in N.J.S.A. 18A:1-1. No statute or administrative regulation was cited which would preempt the disputed clauses as applicable for non-teaching staff of the Board. Negotiability of the disputed clauses will be reviewed for each group of employees.

The first disputed contract provision, Article V, Dismissal Procedure, Section A.2, requires that the Board notify a non-tenured employee of non-renewal of employment and, upon written request of the employee, provide a statement of the reasons. The employee has 20 days from receipt of notice to request the statement; the Board must respond within ten days of the employee's request. Under Code Section 18A:27-3.2, the

employee has 15 days from date of notice of non-reemployment to make a written request for reasons from the Board and the Board response is due within 30 days of the employee request.

Under the test enunciated in State Supervisory Employees, supra, we find that the administrative regulation affords teaching staff greater protection for procedural notice of non-renewal and therefore Article V of the contract is mandatorily negotiable. As to employees other than teaching staff, not subject to the regulations, the contract contains valid and enforceable procedural provisions for notice of non-renewals.

Article XIV, Procedure for Assignments, sections E. and F. of the contract involve changes in staff assignments. Section E. concerns changes in assignments necessitated by "changing circumstances." Section F. sets out a schedule for notice of resignation by a teacher following notice from the Board of a change in assignment. Section E. also includes a declaration that nothing therein prohibits the Board's exercise of its managerial prerogative to determine that changes may be required. The restatement in the collective agreement of rights guaranteed by the Act would be mandatorily negotiable. See In re Fairview Board of Education, P.E.R.C. No. 80-18, 5 NJPER 378 (¶10194 1979).^{1/} But, the requirement in Section E. that only changes "necessitated by changing circumstances" is under Fairview criteria for making the change

^{1/} In Fairview, arguments against inclusion in the contract of rights and obligations which under State Supervisory Employees are automatically incorporated into the collective negotiations agreement properly go to the question of the wisdom of the inclusion, not the negotiability of the provision.

and therefore an improper restriction on the Board's discretion to make assignments. This part of the provision is non-negotiable as to all employees. The requirements of Subsection E. for notice to employees of changes are procedural and mandatorily negotiable as to all employees.

Subsection F. of Article XIV requires a teacher who is notified after the end of the school year of an assignment change, and who desires to resign, to provide written notice of such resignation within two weeks after receipt of the notice.^{2/}

N.J.S.A. 18A:28-8 provides that tenured teachers give at least 60 days' notice of resignation unless "the Board shall approve of the release on shorter notice." The question here is whether N.J.S.A. 18A:28-8 precludes the Board from agreeing to the language in Article XIV, Section F. as to tenured teachers.

The language of N.J.S.A. 18A:28-8 does not require that the exercise of discretion be on a case-by-case basis. Compare, Piscataway Bd of Ed v. Piscataway Custodial & Maintenance Ass'n, 152 N.J Super. 235 (App. Div. 1977). In Article XIV, Section F. of the contract, the Board exercised its permitted discretion under 18A:28-8. The Board has allowed teachers to submit notice of resignation within two weeks of notice of changed assignments only when the Board had not met the deadline set out in Section B of the same Article XIV to notify teachers of changed assignments

^{2/} Section B of the same Article XIV referenced in the first sentence of Section F. requires the Board to notify teachers of their assignments for the following year no later than the last day of school of the current year.

before the end of the current school term. To allow teachers to submit a resignation on two weeks' notice under the circumstances outlined in Section F. of the contract is consistent with the requirements of N.J.S.A. 18A:28-8. Therefore, we find Section F. mandatorily negotiable.

Article XV, Procedure for Promotions applies to all unit employees. To the extent that the contract terms grant employees an opportunity for advancement (1) when vacancies occur, and (2) when employees meet the qualifications of the job, the provisions are no different than the provisions affording qualified employees the right to apply and compete for promotional positions found mandatorily negotiable in Newark Board of Education and Newark Teachers' Union, Local 481, AFT/AFL-CIO, P.E.R.C. No. 80-2, 5 NJPER 283 (¶1056 1979). These provisions are mandatorily negotiable. However, paragraph E. is non-negotiable in part as to the requirement that reclassification be decided by the Superintendent based on seniority because it attempts to set the selection criteria.

Article XVI covers procedures for employee transfers. The initial paragraph and sections A1, B1 and B2 are in dispute. The last sentence of A.1 mandating seniority governs teacher transfers concerns educational policy and is non-negotiable.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd of Ed, 78 N.J. 144 (1978). The preceding sentences of Section A1 establish a deadline for non-tenured employees' requests for change of assignment, school, or both. This provision is procedural and mandatorily negotiable.

Subsections 1 and 2 of Section B, Administrative Decision, are in part negotiable. Only the requirements of B1 and B2 which provides for notice to all employees of transfer decisions, dates and the procedure for submission of requests (under Subsection A2 and A3 of the same Article) are mandatorily negotiable procedural matters. State Supervisory Employees. Other requirements of B1 and B2 concerning limits on the Superintendent's discretion as to selection criteria, are matters of managerial prerogative and non-negotiable. Ridgefield Park.

Article XXI, Employee Evaluation, Section A, Subsections 2,3,4,5,6,7,9 and 10 are claimed improper subjects for negotiations as related to managerial prerogatives or as preempted by administrative regulations. N.J.A.C. 6:3-1.19 and N.J.A.C. 6:3-1.21. The contract provisions relate to all employees generally. Numerous decisions hold that evaluation procedures are mandatorily negotiable but criteria are not.^{3/} New Jersey State Board of Education regulations modify this general principle as applied to tenured teacher evaluations, but the regulations do not totally preempt the area. Fairview and Bethlehem Twp. The Commission has held that administrative regulations which establish specific details of the tenured teacher evaluation process as to procedure

^{3/} In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Byram Twp. Board of Education, P.E.R.C. No. 79-27, 2 NJPER 143 (1976), In re City of Plainfield, P.E.R.C. No. 76-42, 2 NJPER 168 (1976); In re Rutgers, P.E.R.C. No. 76-13, 2 NJPER 13 (1966); Byram Twp. Board of Education v. Byram Twp. Education Ass'n, 152 N.J. Super. 97 (App. Div. 1976.

cannot be negated by the negotiation process. To the extent that the administrative regulations do not establish detailed procedures the parties may do so. The regulations embodied in N.J.S.A. 6:3-1.19 and 6:31.21 have no effect as to evaluations for non-teaching employees, therefore the contract procedural provisions are mandatorily negotiable as to them.

In Bethlehem Twp., the Commission established the standards for analysis of contract provisions concerning tenured teacher evaluations. The preemptive effect of N.J.S.A. 6:3-1.21 on contract provisions concerning tenured teachers is decided under the Bethlehem standards. In the instant contract, Article XX, Section A2, which requires evaluations be performed by certain certified persons, is preempted by 6:3-1.21(h)(1) and is not negotiable.^{4/}

Subsection A3 requires that any written evaluations be given to employees within two calendar weeks of the observation. Regulation 6:3-1.21(e) addresses conferences about annual summaries, not observation reports. Regulation 6:3-1.21(c)(4) covers observation conferences without setting out further details as to timing, content or written findings. The Commission found in Bethlehem that the language of 1.21(c) "in consultation with" does not have the effect of preempting all negotiations as to procedures for the conduct of observations or conferences. Therefore, Section A3 is a negotiable procedural matter.

^{4/} This requirement is automatically incorporated as a term and condition of employment under State Supervisory, which allows the parties to specifically incorporate it by reference in the collective negotiations agreement.

Contract Subsection A4 outlining employee rights to an evaluation conference is not preempted by regulations embodied in 6:3-1.21(c)(h) requiring the development of procedures for observation conferences. The contract provisions are mandatorily negotiable. The contract provisions in A5 and A6 increase the employee's procedural rights by granting employees the right to a copy of their evaluation report before the employee is required to sign the document. This right is separate and apart from any statutory requirement in Regulation 1.21(e)(4) for a conference with the employee. The contract section also protects against any implied waiver of employee rights by limiting the meaning which may be attributed to the employee's signature on the evaluation form. This section is mandatorily negotiable.

The provision in Section A6, which bars filing an evaluation report without the employee's knowledge is not preempted by 1.21(e), which deals with summary conferences before filing a written annual performance report. The contract provision is broader and covers more than just the annual written performance report. It may indeed include a written evaluation made after an observation and therefore affords greater procedural protection than 6:3-1.21(e) and is negotiable. State Supervisory Employees.

Section A7 requires employee grievances which challenge evaluation content to terminate at the Superintendent level. This provision is mandatorily negotiable under Bd of Ed of Bernards Twp v. Bernards Twp Ed Ass'n, 79 N.J. 311 (1979). In Bernards, the New Jersey Supreme Court found that the parties may submit to advisory arbitration disputes concerning salary increments

withheld for inefficiency or other good cause. Similarly, disputes concerning teacher performance which is critiqued through a performance evaluation rather than a withheld increment can be subject to a grievance procedure up to and including advisory arbitration. The proposal in contract Section A7 provides that grievances grounded on bad faith or discrimination may be processed further than the Super-intendent level. We find this section also mandatorily negotiable, based upon our recent decision in In re Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER ____ (¶ ____ 1981). There, we held that grievances based on a claim of discrimination need not terminate short of binding arbitration. The disputed clause in Kearny reads as follows:

...the employer could not discriminate in the assignment of members as to training schools and to assign said members in accordance with the professional needs of the Kearny Police Department.

The Commission said in Kearny:

...freedom from discrimination is a term and condition of employment which must be negotiated upon demand, and may be submitted to arbitration. In this context, the sole concern is one which intimately and directly affects the work and welfare of employees and which does not significantly interfere with the exercise of inherent management prerogatives. This continues to remain the sole concern before the arbitrator. Admittedly, the employer may defend on the basis of his professional judgment and thus require the arbitrator to rule upon whether this defense is pretextual or not. Notwithstanding this limited inquiry, the balance must be struck in favor of negotiability and arbitrability. Bd of Ed of Bernards Twp. v. Bernards Twp. Ed Ass'n, 79 N.J. 311 (1979).

Similarly, in the context of performance evaluations, discrimination would be the sole concern before the arbitrator and

the employer may still defend on the basis of educational policy. The decision as to whether the defense was pretextual and as to the existence of discrimination still remains with the arbitrator.

Contract Section A9 concerns notice to the employee that a final evaluation has been filed and is procedural and quite similar in purpose to A5 and A6. Such matters are not covered by a provision of 6:3-1.21. The provision allows employees to have notice of all material placed in their file during their term of employment, and is mandatorily negotiable.

N.J.A.C. 6:3-1.19 concerns evaluations of non-tenured teaching staff and preempts as to non-tenured teachers Article XXI subsection A2, which provides that teachers be evaluated by certified persons. Provisions of A3,4,5,6, and 7 for employee copies of written evaluation conferences following observations are in addition to the minimum requirements of Section 6:3-1.19(e) and (c) for three (3) observations, written reports and conferences. These contract provisions are mandatorily negotiable. The subject matter of Section A7, grievances, is not covered by statute. It is mandatorily negotiable for non-tenured teaching staff.^{5/}

The provision in Article XXI A10 covers supervisory reports prepared prior to Board action on contract renewals for non-certificated personnel and non-tenured teachers. With respect to non-tenured teachers, N.J.S.A. 18A:27-3.1 requires that such personnel be evaluated thrice yearly. However, the statute

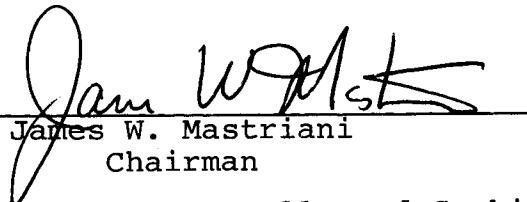
^{5/} The requirements to develop evaluation procedures for non-tenured teaching staff under Section 1.19(c) is similar to the requirements to develop evaluation procedures for tenured teaching staff under 1.21(c)(4) and therefore under our holding in Bethlehem, 1.19(c) does not preempt negotiation where the particular regulation involved allows discretion.

allows one of the three evaluations to cover the period after April 30 of a given school year. Since A.10 provides that at least two evaluations of non-tenured staff be made prior to April 1, it allows for the third required evaluation to occur thereafter and is consistent with the thrice yearly requirement. Therefore, A.10 is negotiable with respect to both non-certificated personnel and non-tenured teachers.

ORDER

In accordance with the above discussion and decision, the Commission orders and directs that all the provisions of the collective agreement found mandatorily negotiable may be included in the successor agreement to the current contract between the Board and the Association. Those contract provisions are valid and enforceable. All contract provisions found non-negotiable subjects for collective negotiations are declared void and unenforceable. The Association may not submit those provisions for inclusion in any successor agreement with the Board.^{6/}

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels and Suskin voted in favor of this decision. Commissioners Graves voted against the decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
April 16, 1981
ISSUED: April 20, 1981

^{6/} In applying the instant decision the parties are reminded that some of the provisions we have determined are non-negotiable because they are preempted by regulations or statutes which apply solely to "Teaching staff members," or non-tenured, or tenured teachers as the case may be, are negotiable as to employees who do not fit those definitions and are thus not affected by the particular statute or regulation. In reviewing each of the disputed proposals we have taken care to make these distinctions when applicable.

APPENDIX "A"

N.J.S.A. 18A:28-8 Notice of intention to resign required

Any teaching staff member, under tenure of service, desiring to relinquish his position shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve of a release on shorter notice and if he fails to give such notice he shall be deemed guilty of unprofessional conduct and the commissioner may suspend his certificate for not more than one year.

N.J.S.A. 18A:27-3.1 Non-tenured teaching staff; observation and evaluation; conference; purpose

Every board of education in this State shall cause each nontenured teaching staff member employed by it to be observed and evaluated in the performance of her or his duties at least three times during each school year but not less than once during each semester. Said evaluations are to take place before April 30 each year. The evaluations may cover that period between April 30 of one year and April 30 of the succeeding year excepting in the case of the first year of employment where the three evaluations must have been completed prior to April 30. The number of required observations and evaluations may be reduced proportionately when an individual teaching staff member's term of service is less than one academic year. Each evaluation shall be followed by a conference between that teaching staff member and his or her superior or superiors. The purpose of this procedure is to recommend as to reemployment, identify any deficiencies, extend assistance for their correction and improve professional competence.

N.J.S.A. 18A:27-3.2 Teaching staff member; notice of termination; statement of reasons; request; written answer

Any teaching staff member receiving notice that a teaching contract for the succeeding school year will not be offered may, within 15 days thereafter, request in writing a statement of the reasons for such nonemployment which shall be given to the teaching staff member in writing within 30 days after the receipt of such request.

N.J.A.C. 6:3-1.19 Supervision of instruction; observation and evaluation of nontenured teaching staff members

(a) For the purpose of this Section, the term "observation" shall be construed to mean a visitation to a classroom by a member of the administrative and supervisory staff of the local school district, who holds an appropriate certificate for the supervision of instruction, for the purpose of observing a nontenured teaching staff member's performance of the instructional process:

1. Each of the three observations required by law shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative/supervisory staff member who visits the classroom for the purpose of observing a teaching staff member's performance of the instructional process.

(c) Each local board of education shall adopt a policy for the supervision of instruction, setting forth procedures for the observation and evaluation of nontenured teaching staff members, including those assigned to regular classroom teaching duties and those not assigned to regular classroom teaching duties. Such policy shall be distributed to each teaching staff member at the beginning of his/her employment.

(d) Each policy for the supervision of instruction shall include, in addition to those observations and evaluations hereinbefore described, a written evaluation of the nontenured teaching staff member's total performance as an employee of the local board of education.

(e) Each of the three observations required by law shall be followed within a reasonable period of time, but in no instance more than 15 days, by a conference between the administrative/supervisory staff member who has made the observation and written evaluation, and the nontenured teaching staff member. Both parties to such a conference will sign the written evaluation report and retain a copy for his/her records. The nontenured teaching staff member shall have the right to submit his or her written disclaimer of such evaluation within ten days following the conference, and such disclaimer shall be attached to each party's copy of the evaluation report.

(f) The purposes of this procedure for the observation and evaluation of nontenured teaching staff members shall be to identify deficiencies, improve professional competence, provide a basis for recommendations regarding reemployment, and improve the quality of instruction received by the pupils served by the public schools.

N.J.A.C. 6:3-1.21 Evaluation of tenured teaching staff members

(a) Every local board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel (N.J.S.A. 18A:1-1; N.J.A.C. 6:11-3.4).

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of teaching staff members;
2. Improve student learning and growth;
3. Provide a basis for the review of performance of tenured teaching staff members.

(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with tenured teaching staff members and shall include but not be limited to:

1. Roles and responsibilities for implementation of policies and procedures;
2. Development of job description and evaluation criteria based upon local goals, program objectives and instructional priorities;
3. Methods of data collection and reporting appropriate to the job description including, but not limited to, observation of classroom instruction;
4. Observation conference(s) between the supervisor and the teaching staff member;
5. Provision for the use of additional appropriately certified personnel where it is deemed appropriate;
6. Preparation of individual professional improvement plans;
7. Preparation of an annual written performance report by the supervisory and an annual summary conference between the supervisor and the teaching staff member.

(d) These policies shall be distributed to reach tenured teaching staff member no later than October 1. Amendments to the policy shall be distributed within 10 working days after adoption.

(e) The annual summary conference between supervisors and teaching staff members shall be held before the written performance report is filed. The conference shall include but not be limited to:

1. Review of the performance of the teaching staff member based upon the job description;
2. Review of the teaching staff member's progress toward objectives of the individual professional improvement plan developed at the previous annual conference;
3. Review of available indicators of pupil progress and growth toward the program objectives;
4. Review of the annual written performance report and the signing of said report within five working days of the review.

(f) The annual written performance report shall be prepared by a certified supervisory who has participated in the evaluation of the teaching staff member and shall include but not be limited to:

1. Performance areas of strength;
2. Performance areas needing improvement based upon the job description;

3. An individual professional improvement plan developed by the supervisor and the teaching staff member;

4. A summary of available indicators of pupil progress and growth, and a statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member;

5. Provision for performance data which have not been included in the report prepared by the supervisor to be entered into record by the evaluatee within 10 working days after the signing of the report.

(g) Local board of education policies for the evaluation of tenured teaching staff members, based upon but not limited to the above provisions, shall be developed during the 1978-79 school year and shall become operational September 1, 1979. These provisions are the minimum requirements for the evaluation of tenured teaching staff members.

(h) For the purposes of this section:

1. Appropriately certified personnel means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction.

2. Indicators of pupil progress and growth means the results of formal and informal assessment of pupils as defined in N.J.A.C. 6:8-3.4.

3. Individual professional improvement plan is a written statement of actions developed by the supervisor and the teaching staff member to correct deficiencies or to continue professional growth, timelines for their implementation, and the responsibilities of the individual teaching staff member and the district for implementing the plan;

4. Job description means a written specification of the function of the position, duties and responsibilities, the extent and limits of authority, and work relationships within an outside the school district;

5. Observation conference means a discussion between supervisor and teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member's annual evaluation;

6. Observation means a visitation to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member's assigned duties and responsibilities and of a duration appropriate to same;

7. Performance report means a written appraisal of the teaching staff member's performance prepared by an appropriately certified supervisor;

8. Supervisor means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members;

9. Teaching staff member means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him/her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his/her office, position or employment, issued by the state board of examiners and includes a school nurse; excluding the district superintendent of schools or, if there is no superintendent, excluding the principal.

APPENDIX "B"

ARTICLE V DISMISSAL PROCEDURE

- A.2. If requested, in writing, by the employee within twenty (20) school days of notice of employment not being offered, the superintendent shall within ten (10) school days furnish to an employee who has not been offered reemployment reasons for his/her nonemployment.

ARTICLE XIV PROCEDURE FOR ASSIGNMENTS

- B. No later than the last day of school of any year, or earlier if conditions make possible, all teachers shall be notified of the following matters concerning their assignment for the following year:
1. subject to be taught,
 2. grade or class assignment,
 3. building assignment,
 4. length of school day and required hours.
- E. It is understood by all parties that many factors are involved in determining the items specified under B and D. Circumstances and or emergencies may necessitate a change. This section is not to prohibit changes to individual teachers. The Board does agree that changes which do take place will be only those necessitated by changing circumstances after the above indicated dates and that the individuals and/or the Association shall be notified prior to implementation of such change.
- F. In the event of a change pertaining to B after the last day of school to a specific teacher such teacher is released from the requirement to provide a sixty (60) day notice of intent to resign unless the change occurs as a result of a decrease in the number of students. The teacher is required to notify the superintendent of resignation within two (2) weeks after receiving the mailed notification of changed status to the specific teacher.

ARTICLE XV PROCEDURE FOR PROMOTIONS

- E. Advancement of employees desiring reclassification shall be based upon qualifications and seniority. Consideration for advancement from one classification to the next highest classification shall be afforded to employees (1) when vacancies occur, (2) when the employee has acquired such skills and proficiencies as are required in the next highest classification and the employee has demonstrated capability

in performing duties specified in the job requirements of the higher classification. The superintendent shall make the decision after giving due consideration to the employee request and the needs of the district.

ARTICLE XVI
PROCEDURES FOR TRANSFERS

- A.1. An employee, other than non-tenure, may request a change of school, assignment or both when such request is made before May 1. A written request should be sent to the superintendent through the principal. When two qualified employees request the same position, as a general rule, at the discretion of the superintendent, seniority in the district will prevail.
- B.1. When the superintendent believes that a transfer will be in the best interest of the employee or the school so affected, the employee will be advised of this decision in writing immediately upon its becoming firm. The employee will have recourse to the provisions in section A.2. and A.3.
- B.2. The superintendent at his/her discretion, giving consideration to the welfare of the school district, shall to the extent possible first transfer all qualified volunteers. After which, this transfer will be made considering qualifications and the years of service in the school district, those with lowest years of service and qualifications to be transferred first. Notice of all transfers will be given to the teachers concerned as soon as practicable, and under normal circumstances before the end of the school year.

ARTICLE XXI
EMPLOYEE EVALUATION

- A.2. Teachers shall be evaluated only by persons certificated by the New Jersey Board of Examiners to supervise instruction. The responsibility to become certificated will be solely that of the employee.
- 3. Any written evaluation made after an observation by an administrative officer shall be submitted to the employee within two (2) calendar weeks after such evaluation was made.
- 4. If requested by the administrator, supervisor or employee, a conference shall be held with his/her evaluators to discuss the employee's evaluation.
- 5. An employee shall be given a copy of his/her written evaluation report at least one (1) day before he/she is asked to sign it. This signature shall indicate only that the

employee has seen the completed evaluation report.

6. No evaluation report shall be submitted to the central office or placed in the employee's file without his/her knowledge. No employee shall be required to sign a blank or incomplete evaluation form.
7. Grievances concerning the content or substance of an administrative evaluation shall terminate at the superintendent level except on the grounds of bad faith and or discrimination.
9. Final evaluation of an employee upon termination of his/her employment shall be concluded prior to severance and no documents and/or other material shall be placed in the personnel file of such employee after severance except material and information based upon his/her contract year with the system.
10. All non-certificated personnel will be entitled to at least one (1) supervisory report prior to action concerning contract renewal for the subsequent or next employment year. All non-tenured teachers will be entitled to at least two (2) supervisory reports prior to April 1 of a school year and prior to recommendation concerning contract renewal.