

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON CENTRAL HIGH SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-86-52

HUNTERDON CENTRAL HIGH SCHOOL
EDUCATION ASSOCIATION,

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of proposals the Hunterdon Central High School Education Association submitted to the Hunterdon Central High School Board of Education during contract negotiations. The Commission finds the following proposals to be mandatorily negotiable: binding arbitration of grievances; notice of the school calendar; rotation of teachers to assigned cafeteria duty; sick leave accumulation; overtime allocation; minimum payment for overtime assignments; tuition waiver for staff members and teacher workload.

The Commission finds the following proposals to be not mandatorily negotiable: binding arbitration concerning the non-renewal of a non-tenured teacher after the third year of employment; binding arbitration to review discipline of employees who have alternate statutory appeal procedures; personal and academic freedom; school year; limitation on assignment of non-teaching duties; sick leave verification; assignment to training courses; class size; selection of health insurance carrier; assignment to extra-curricular positions; assignment of lunchroom duty and the hiring of aides; minimum staffing and personnel assignment in emergencies; assignment of teachers to cover classes when substitutes are unavailable; health benefits for retirees and curriculum and teaching methods.

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HUNTERDON CENTRAL HIGH SCHOOL
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Murray & Granello, Esqs.
(James P. Granello, of counsel)

For the Respondent, Ruhlman, Butrym & Friedman, Esqs.
(Mary Jane Cullen, of counsel)

DECISION AND ORDER

On January 20, 1986, the Hunterdon Central High School Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a determination that fifteen provisions the Hunterdon Central High School Education Association ("Association") seeks to maintain in a successor collective negotiations agreement and ten new proposals are not mandatorily negotiable.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of certain Board employees. The Board and Association entered a collective

negotiations agreement effective from July 1, 1983 to June 30, 1986. That agreement contained several articles which the Association wants included in the successor agreement. The Association also wishes to amend several articles. This petition ensued.

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

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 403-404]

Article III of the predecessor agreement is the grievance procedure. It provides, in part:

The decision of the Arbitrator shall be submitted to the Board and the Association and shall be final and binding on the parties except in cases dealing with the non-renewal of a non-tenured teacher during the first two (2) years of employment within the district which, in such cases, the Arbitrator's decision shall be advisory only.

Article III is not mandatorily negotiable to the extent it would allow binding arbitration concerning the non-renewal of a non-tenured teacher after the third year of employment; a decision almost akin to determining whether the teacher should receive tenure. Cf. Bd. of Ed. of the Bor. of Fair Lawn v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980). The first portion of the clause is valid since binding arbitration of grievances is mandatorily negotiable. Tp. of W. Windsor v. PERC, 78 N.J. 98 (1978).

Article IV of the predecessor agreement is entitled "Employee Rights and Responsibilities." Section C provides:

No employee shall be disciplined, given an adverse evaluation, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

A contract may provide for binding arbitration to review the discipline of employees who lack statutory protection or alternate statutory appeal procedures. Whether an employee, tenured or non-tenured, has an alternate statutory appeal procedure for the subject of a particular grievance cannot always be determined until an actual dispute arises. See Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, _____ NJPER _____ (¶ _____ 1986). In New Providence Bd. of Ed., P.E.R.C. No. 83-88, 9 NJPER 70 (¶14038 1982), we held that a

clause allowing binding arbitration of disciplinary disputes was mandatorily negotiable so long as it reflected the exceptions set forth in N.J.S.A. 34:13A-5.3. Article IV does not reflect the statutory language and is not mandatorily negotiable unless so clarified.

Article V is entitled "Personal and Academic Freedom." Section C requires that the curriculum includes discussion and teaching of controversial subjects and sets forth a policy. This issue is not negotiable. North Hunterdon Bd. of Ed., P.E.R.C. No. 85-100, 11 NJPER 233 (¶16090 1985); Edison Tp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983); New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980).

Article VII concerns the school calendar. Sections A and B provide:

- A. The school calendar shall be set forth in Schedule "D". The school calendars for the subsequent year of this contract shall be established in accordance with Board policy and once established affixed to this Agreement. There shall be no deviation or change in the school calendar except by mutual agreement of the Board and Association. This statement does not interfere with the authority of the Superintendent to close school when in his opinion it is in the best interest of the school and its students and staff.
- B. The school calendar shall be established each year in consonance with the needs of the school in relationships with other school districts in the area.

The determination of when the school year begins and ends is a non-negotiable managerial prerogative. Bd. of Ed. of Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n., 81 N.J. 582 (1980). The first two sentences of Section A, however, are mandatorily negotiable since they simply require notice of the school calendar once established. The rest of Sections A and B is not negotiable.

Article XIII is entitled "Non-teaching Duties" and states that teachers should perform only professional activities so that they have more time to improve the "total educational program." It also states that teachers shall not supervise the loading and unloading of buses, drive students, or perform library duties and that detention hall duty shall be shared between administrators and non-administrators. The provision also requires the Board to hire an employee to assist teachers with preparing materials and correspondence, and ordering supplies and to "make every reasonable effort" to decrease duty assignments and increase preparation periods. These provisions are not mandatorily negotiable. They infringe upon the Board's managerial prerogatives to hire personnel and to assign non-teaching duties. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); Paterson Police PBA v. Paterson, 87 N.J. 78 (1981); Long Branch Ed. Ass'n v. Bd. of Ed. of Long Branch, 150 N.J. Super. 262 (1976); Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983). However, that portion

of Section 3a which provides for rotation of teachers to assigned cafeteria duty is mandatorily negotiable. Atlantic Highlands Bd. of Ed., P.E.R.C. No. 87-28, 12 NJPER ____ (¶____ 1986).^{1/}

Article XVI, entitled "Sick Leave," provides in part:

B. Twelve non-accumulative additional sick leave days shall be allowed to employees each school year as of the first official day of said school year, whether or not they report for duty on that date.

C. All accumulated sick leave days shall be used before non-accumulated sick leave days.

Sections B and C are mandatorily negotiable and do not conflict with N.J.S.A. 18A:30-6 or N.J.S.A. 18A:30-7. See Hoboken Bd. of Ed., P.E.R.C. 81-97, 7 NJPER 135 (¶12058 1981), aff'd App. Div. No. A-33-79-80T2, pet. for certif. dism'd as improvidently granted, 93 N.J. 263 (1983).

Section D of Article XVI provides:

The Board of Education reserves the right to require a certificate from a doctor in any case where a school employee is absent for three or more consecutive days.

This section is not mandatorily negotiable. City of Elizabeth and Elizabeth Fire Officers Ass'n, Loc. 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985).

Article XXI, entitled "Professional Development and Educational Improvement," provides in part:

B.1. To work toward the ends stated above, the Board agrees to establish a procedure by which teachers may appeal decisions on authorization to attend courses, workshops,

^{1/} Moreover, the Board is required to negotiate over proposed changes in the content of the teachers' day increasing workload or pupil contact time.

sessions seminars, conferences, in-service training or other such sessions. Within ten (10) days after signing this agreement, the Superintendent and the President of the Association shall each appoint two (2) members to a committee, selecting a Chairman, who shall be a voting member, among themselves to reach these ends. The Superintendent and the President of the Association may, from time to time, replace members appointed by them.

3. The Board and the Association agree to cooperate in arranging in-service courses, workshops, conferences, and programs designed to improve the quality of instruction.

These sections are not mandatorily negotiable. The decision as to what training courses teachers should be assigned is a managerial prerogative. E.g., Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224, 225 (¶16087 1985); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). Compare Bd. Of Ed of S. Orange-Maplewood v. S. Orange-Maplewood Ed. Ass'n., 147 N.J. Super. 457 (App. Div. 1977) and Willingboro Bd. of Ed. and Willingboro Ed. Assn., P.E.R.C. No. 80-46, 5 NJPER 475 (¶10240 1979), aff'd P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979), aff'd App. Div. Docket No. A-1756-79 (12/8/80), certif. den. 87 N.J. 320 (1981) (sabbatical leave is mandatorily negotiable).

Article XXIV, entitled "Books and Other Instructional Materials and Supplies," provides in part:

- A. The Board shall allocate funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities.

This section is not mandatorily negotiable. Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980).

Article XXIX, entitled "Class Size" provides:

- A. Class size shall be determined in the best interest of the educational process.
- B. Whether or not it is in the best interest of the educational process shall be determined by the teacher of his class, his immediate supervisor, and the Principal.

Class size is not negotiable. E.g., North Hunterdon Bd. of Ed., P.E.R.C. No. 85-100, 11 NJPER 233 (¶16090 1985); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981).

Article XXX reads:

All secretarial and clerical employees shall take switchboard duty for one eight (8) hour day which is a school calendar vacation day (other than legal holidays) as a part of their work requirement. The selection of a day to serve will be done in the order of employee seniority. (This day shall be paid at the overtime rate. If no one volunteers as per Article X, section A7)

Hours of work and allocation of overtime work are mandatorily negotiable. City of Newark, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981). Absent evidence that secretaries and clerical employees are unqualified for switchboard duty, this proposal does not infringe upon the prerogative to assign work to qualified employees. In any case, the provision is mandatorily negotiable to the extent that it allocates overtime among qualified employees.

Article XXXI, Section C provides in part:

Effective July 1, 1984, the Board agrees to provide employee only dental coverage including preventive and diagnostic at 100% pay, basic benefits at 80% pay after a \$25.00 deductible single/\$75.00 family, prosthodontics at 50% pay, and orthodontics at \$750.00 maximum per year. The company chosen shall be mutually acceptable to the Board and Association. Effective July 1, 1985, the Board agrees to provide full family dental coverage.

The Board contends it may choose the insurance carrier provided it does not change the level of benefits. We agree. Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15085 1984); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1985), aff'd App. Div. No. A-3690-79, certif. den. 91 N.J. 236 (1982).

Schedule C, concerning extra-curricular compensation, provides in part:

3. Teachers shall be assigned to extra-curricular positions, with compensation, as specified herein, on a voluntary basis.
5. To the extent that any of the above activities are scheduled, the positions must be filled if qualified personnel apply for the positions.

These provisions are not negotiable. See Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 176 N.J. Super. 476 (1980), certif den. 87 N.J. 312 (1981).

The predecessor agreement contains this side-bar agreement:

1. Available staff will serve no more than two marking periods of lunch duty over a two-year period.

2. To maintain this equity and provide two supervisors per period in the upper school lunchroom it will be at the discretion of the Board of Education to assign one aide per assigned lunch period, supervised by the professional staff member.

These clauses are not mandatorily negotiable. They pertain to the assignment of lunchroom duty and the hiring of aides. South Brunswick Tp. Bd. of Ed., P.E.R.C. No. 85-60, 11 NJPER 22 (¶16011 1984). Compare Atlantic Highlands Bd. of Ed.

The Association proposes adding these provisions to Article

X.A:

An aide shall be provided for the secretaries to cover the switch board and house offices during lunch and to aid in projects and distributing mail. In order to have her assigned to a project, a written request shall be made 5 days in advance by the appropriate office.

Mail distribution should be handled by the mail carrier rather than the secretaries at 2:30 each day. Secretaries should not have to leave their desks unattended while students, parents, teachers, and administrators are still around needing their services.

These provisions are not negotiable. Ridgefield Park Ed. Ass'n. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 156 (1978); Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶16030 1984); Hoboken Bd. of Ed., P.E.R.C. No. 85-74, 10 NJPER 353 (¶ 15164 1984); Wall Tp. Bd. of Ed., P.E.R.C. No. 84-61, 10 NJPER 14 (¶15008 1983).

The Association proposes to add this section to Article X.B:

While buses are transporting students, mechanics shall not be on duty alone to answer phones or to be responsible for emergency situations.

It is not negotiable because it limits the Board's rights to set minimum staffing levels and to assign personnel in emergencies.

City of Plainfield, P.E.R.C. No. 84-29, 9 NJPER 601 (¶14254 1983); Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd, 152 N.J. Super. 12, 25 (1977).

The Association proposes adding these provisions to Article XIII.A.2 and Article XX:

Security people shall be hired to handle all duties in the school. During the periods in the teachers' schedules reserved for duties, student conference time should be established allowing more contact time between students and teachers.

Substitute secretaries should be hired whenever a secretary is absent.

For the reasons stated in our discussion of Article XIII, these provisions are not mandatorily negotiable.

The Association proposes to add this to Article XX:

In cases in which substitutes are not available or in emergencies, teachers may be asked on a period by period basis to cover absent teachers' classes. In such an event, the assigned teachers will be paid at the rate of \$20 per period.

School boards have the managerial prerogative to assign teachers to cover classes when substitutes are unavailable. Byram, 152 N.J. Super. at 25; Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). This proposal, unlike the proposal in Mahwah, does not limit the school board's managerial prerogative by requiring teachers' consent to assign them to cover when substitutes are unavailable. It does, however, limit such assignment to a

"period by period basis," and to that extent, is not mandatorily negotiable. The rest of the proposal involves compensation and is mandatorily negotiable.

The Association proposes to add a Section to Article XXI which would require the Board to create a permanent item in its annual budget for the "Teacher Innovation Grants Programs" to fund "projects focusing on pedagogical and/or curricular innovations" for the staff. The proposal also sets forth the "mechanics" of the grants program: (1) dollar limits on funding requests; (2) formation of a bipartisan committee to select projects for funding; (3) criteria for funding; (4) blind review of applications; (5) formation of written application and evaluation forms; (6) requirement that funding be for novel projects; and (7) provision for placement and disbursement of grant funds. These provisions are not mandatorily negotiable because they involve curriculum and teaching methods. Bd. of Ed. of Tp. of Rockaway v. Rockaway Tp. Ed. Ass'n, 120 N.J. Super. 564 (Ch. Div. 1972).

The Association proposes to add this provision to Article XXX of the predecessor agreement:

All assigned overtime shall be a minimum of two
(2) hours.

This provision is mandatorily negotiable. Bor. of Bound Brook, P.E.R.C. No. 79-66, 5 NJPER 126 (¶10075 1979).

The Association proposes that "Retirees and spouses shall be included in the insurance plans paid for by the Board," (Art.

XXXI.F). This proposal is not mandatorily negotiable to the extent it would cover already retired employees as opposed to current employees. Tp. of Ocean, P.E.R.C. No. 81-136, 7 NJPER 338 (¶12152 1981).

The Association proposes that "All children of staff members shall be permitted to attend HCHS tuition free." This proposal is mandatorily negotiable. In Pennsville Bd. of Ed., P.E.R.C. No. 81-125, 7 NJPER 247 (¶12111 1981), we determined that tuition waiver is a negotiable form of compensation, not preempted by N.J.S.A. 18A:38-3. That section simply permits charging tuition to non-resident pupils. We construe N.J.S.A. 18A:38-19 to allow school boards to determine the rate of tuition to be charged to non-resident pupils once the board has decided to charge tuition under N.J.S.A. 18A:38-3. Since we have already determined that negotiations over tuition waiver are not preempted by N.J.S.A. 18A:38-3, N.J.S.A. 18A:38-19 is also not preemptive and Section G of Article XXXV is mandatorily negotiable.

The Association's proposal to add a new provision to Schedule C of the predecessor agreement reads as follows:

As long as one individual handles both positions as Echo Advisor and Business Advisor, that person should not have a duty assignment.

This proposal pertains to workload. It is mandatorily negotiable. E.g., Monroe Tp. Bd. of Ed., P.E.R.C. No. 86-56, 11 NJPER 709 (¶16246 1985); Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-53, 6 NJPER 325 (¶11161 1980).

ORDER

The following provisions of the predecessor agreement are not mandatorily negotiable:

Article III, Section C, subsection 6.c, to the extent it would allow binding arbitration concerning the non-renewal of a non-tenured teacher after the third year of employment.
Article V, Section C
Article VII, Section A, last two sentences, Section B
Article XIII, with the exception of Section 3a.
Article XVI, Section D
Article XXI, Sections B.1. and B.3.
Article XXIV, Section A, first sentence
Article XXIX
Article XXXI, Section C, 2nd sentence
Schedule C, notes 3 and 5
Side Bar Agreement, Section A, fourth paragraph, subsections 1 and 2

The following proposals to amend the predecessor agreement are not mandatorily negotiable.

New Subsection 8 of Article X.A.
New Subsection B of Article X.A
New Subsection 9 of Article X.B
Amendment to Article XIII, A.2.
New Section E of Article XX
New Section E.2 of Article XXI
New Section F of Article XXXI


The following provisions of the predecessor agreement are mandatorily negotiable:

Article III, Section C, subsection 6.c, last sentence up to the word prior to "except".
Article IV, Section C, if clarified in accordance with this decision.
Article VII, Section A, first two sentences.
Article XIII, Section 3a.
Article XVI, Sections B and C
Article XXX, Section A.2.

The following proposals to amend the predecessor agreement are mandatorily negotiable:

New Section D of Article XX, except the phrase "on a period by period basis."
Article XXX, Section A.4.
New Section G of Article XXXV.
Amendment to Schedule C, notes
Section 3(a) of Article XIII

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
December 22, 1986
ISSUED: December 23, 1986