

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN COUNTY COMMUNITY COLLEGE,

Petitioner,

-and-

Docket No. SN-2015-055

WARREN COUNTY COLLEGE FACULTY  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of contract clauses in an expired collective negotiations agreement between Warren County Community College and Warren County College Faculty Association. The Commission finds mandatorily negotiable provisions concerning: a list of committees; faculty selection among different sections of the same course; consultation between administration and faculty to resolve scheduling conflicts; non-teaching reassignments to the extent they affect a faculty member's working hours, workload, or compensation; and the provision of a computer, and appropriate software, as defined by the administration to faculty members for work-related purposes.

The Commission finds not mandatorily negotiable provisions concerning: faculty rights pertaining to primary responsibility for determining appropriate learning materials and strategies; faculty selection of course assignments; requiring faculty member reassignment if he/she is unable to make load because of enrollment issues; requiring mutual agreement with a faculty member prior to making teaching area assignments where he/she has limited formal preparation/experience; establishing the primary purpose of the semester schedule and requiring the College to honor faculty course and scheduling preferences; requiring mutual agreement with a faculty member prior to assigning non-teaching duties; requiring the College to provide sufficient clerical support to meet faculty needs; substantive criteria for faculty promotion and academic rank; requiring faculty promotional recommendations come from the Professional Standards Committee and be included in the President's recommendation to the Board of Trustees; permitting the initiation of promotional recommendations to come from the President; substantive faculty self-evaluation criteria and elements of faculty annual evaluation.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2016-48

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Appearances:

For the Petitioner, Cleary, Giacobbe, Alfieri, Jacobs,  
LLC, attorneys (Matthew J. Giacobbe, of counsel)

For the Respondent, Detzky, Hunter & DeFillippo, LLC,  
attorneys (Stephen B. Hunter, of counsel)

DECISION

On February 26, 2015, Warren County Community College (College) petitioned for a scope of negotiations determination. The College asserts that portions of its expired collective negotiations agreement (CNA) with the Warren County College Faculty Association (Association) are not mandatorily negotiable and therefore cannot be retained in a successor agreement.

The parties have filed briefs. These facts appear.

The Association represents all full-time teaching faculty employed by the College holding the rank of Instructor, Assistant Professor, Associate Professor or Professor. The College and the

Association are parties to a CNA in effect from July 1, 2012 through June 30, 2015.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. *Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.*, 78 N.J. 144, 154 (1978). We do not consider the wisdom of the clauses in question, only their negotiability. *In re Byram Tp. Bd. of Ed.*, 152 N.J. Super. 12, 30 (App. Div. 1977).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in *Local 195, IFPTE v. State*, 88 N.J. 393, 404-405 (1982):

[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.

**FACULTY RIGHTS AND ACADEMIC FREEDOM**

The College disputes that the following underlined language in Article IV, Faculty Rights and Academic Freedom, is not mandatorily negotiable:

I) Faculty rights shall include the following:

Consistent with the state catalog course description and approved course master syllabus, the primary responsibility for determining appropriate learning materials and strategies rests with the faculty members teaching the course, unless the course content being taught by the faculty member does not support or articulate with the student learning objectives as stated in the course syllabus. Where such a circumstance exists, the faculty member and the College shall be obligated to meet and resolve the discrepancy between what is being taught and what should be taught based on the requirements of the syllabus.

Citing to Burlington Cty. Coll., P.E.R.C. No. 2010-38, 35 NJPER 439 (¶144 2009), the College argues that this contract provision restricts its managerial prerogative to determine elements of curriculum by placing discretion in the faculty to determine which learning materials and teaching strategies will be utilized. The College also maintains that this provision contemplates that a faculty member may impose teaching materials and strategies which do not support the learning goals stated in the course syllabus and, in the event there is a discrepancy as to teaching methodology, obligates the College and faculty member to meet and resolve such differences.

The Association maintains that the determination of appropriate learning materials and strategies intimately and directly affects the work of faculty members. The Association questions how this contract provision could interfere with the determination of educational policy given that it includes: oversight by designees of the College to determine whether the course content supports or articulates with student learning objectives as stated in the course syllabus developed by the College; a mechanism whereby a faculty member and a College representative will meet to resolve any discrepancies concerning the delivery of course content. The Association argues that nothing within this contract provision specifically interferes with the College's right to require the use of certain testing methodologies or methods of the presentation of educational materials in classroom instruction.

The first sentence of this contract provision gives the faculty member the primary responsibility for determining appropriate learning materials and strategies. A public college has a managerial prerogative to determine educational curriculum programs, which encompasses the method of presentation of educational materials. Burlington Cty. Coll., P.E.R.C. 2010-38, 35 NJPER 439 (¶144 2009); Middlesex Cty. Coll., P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977). In Burlington Cty. Coll., P.E.R.C. 2010-38, 35 NJPER 439 (¶144 2009), we found that a nearly

identical contract provision was not mandatorily negotiable. In pertinent part, that provision provided:

Consistent with the stated catalog course descriptions, the primary responsibility for determining course content, course goals, learning objectives and the selection of the appropriate learning materials and strategies rests with the unit member who teaches the course.

The subject contract provision curtails management's right to decide as a matter of policy which learning materials and strategies would be educationally beneficial and is therefore not mandatorily negotiable.

The second sentence of this provision obligates the College and faculty member to meet and resolve discrepancies about learning materials and strategies. Contract provisions which require mutual agreement or permit union members to offer binding input regarding an employer's managerial prerogative are not mandatorily negotiable. See, e.g., State-Operated School District of the City of Paterson, P.E.R.C. 2005-9, 30 NJPER 339 (¶111 2004); Burlington Cty. Coll., P.E.R.C. 90-13, 15 NJPER 513 (¶20213 1989); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER (¶17323 1986); Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17, 31-32 (1973). Therefore, the second sentence of this provision is also not mandatorily negotiable.

**WORK WEEK AND WORK LOAD**

The College disputes that the following underlined language in Article VI, Work Week and Workload, are not mandatorily negotiable:

I) Standing Committees include Curriculum and Instruction; Faculty and Staff Forum; Professional Development/Faculty Travel; Internal Review Board; Outcomes Assessment/Program Review; President's Council; Student Success and Retention; and Teaching, Learning & Technology Roundtable.

II) The College will share the master schedule with the full-time faculty at least three (3) weeks prior to the opening of fall or spring registration. Full-time faculty shall have two (2) weeks to make their selections of class assignments.

III) If a faculty member is unable to make load because of enrollment issues the administration will ensure through course reassignment that the faculty member makes load. Every effort will be made in any displacement to impact adjuncts first, non full-time faculty employees second, and full-time faculty third.

IV) A faculty member is not to be assigned to an area where he/she has limited formal preparation/experience unless it is mutually agreed upon by the faculty member and the College administration.

V) The primary purpose of the semester schedule is to meet students' and curriculum needs. Within this framework, each Faculty member shall receive his/her teaching schedule by June for the succeeding fall semester and by December 15 for the succeeding spring semester. Announcement of a tentative master schedule will be made to honor the Faculty member's course and scheduling preferences. Conflicts in

schedule will be resolved by the appropriate administrator in consultation with the affected faculty member(s). If and when changes in the master schedule are necessitated, the Faculty member(s) will be notified as soon as possible.

VI) College work assignments in lieu of in-course work:

A faculty member who is under contract to the College but whose full-time teaching schedule cannot be filled due to the unavailability of courses for which the faculty member is qualified may be reassigned to responsibilities other than the responsibilities described in the collective Agreement. Such reassignment shall be mutually agreeable to the faculty member and the College.

With regard to provision I, the College argues that this contract provision grants no discretion to the College to create or abolish committees. Further, the College maintains that the Curriculum and Instruction Committee and the Teaching, Learning and Technology Roundtable require the College to negotiate over the existence of groups that will unlawfully impact upon curriculum development and policy. The College relies on Union Cty. Coll., P.E.R.C. No. 2015-24, 41 NJPER 205 (¶70 2014); Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998) and Essex Cty. Coll., P.E.R.C. No. 2007-46, 33 NJPER 19 (¶8 2007).

The Association argues that the specific language at issue places no restriction on the College's right to establish or

abolish any standing committee(s), nor does it have any relationship to the establishment of curriculum or instructional policy.<sup>1/</sup>

The underlined language only sets out a list of committees at the College and does not implicate any managerial prerogative. Therefore, it is mandatorily negotiable.

With regard to provision II, the College argues that this language substantially interferes with its managerial prerogative to assign employees as it deems appropriate given that faculty members are granted a two-week period to select their classes after the master schedule has been prepared and released by the College. Rutgers, The State University, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991).

The Association questions how providing faculty members with two weeks to propose their selections of class assignments interferes with the determination of educational policy. Rather, the Association argues that there is nothing within this contract provision that requires the College to agree that a faculty member's selection of class assignments is dispositive.<sup>2/</sup>

This contract provision requires the College to give faculty members two weeks to make class assignment selections. It is

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1/ The Association does not cite to any authority for its position.

2/ The Association does not cite any authority for its position.

unclear whether this language refers to the selection of particular courses or the selection of sections of the same course. "An employer has a non-negotiable prerogative to assign employees to meet the governmental policy goal of matching the best qualified employees to particular jobs." Union Cty. Coll., P.E.R.C. No. 2015-24, 41 NJPER 205 (¶70 2014). Although it may consider faculty preference, a public college "must . . . retain its prerogative to assign particular teachers to particular courses." Rutgers, The State University, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991). However, "[p]riority in schedules is mandatorily negotiable to the extent it means the right to determine one's work hours by choosing among different sections of the same course." Ibid.

To the extent this contract provision relates to faculty selection of particular courses rather than the College's consideration of faculty preference, it infringes on the College's managerial prerogative to assign the most qualified teachers to specific courses and is therefore not mandatorily negotiable. Ibid., Union Cty. Coll. However, to the extent that this contract provision refers to faculty selection among different sections of the same course, it is mandatorily negotiable.

With regard to provision III, the College contends that this contract provision mandates that faculty members "make load"

notwithstanding the fact that courses may have to be cancelled for lack of enrollment, which places the job status of faculty members above the College's duty to deliver educational services to best meet educational goals.

The Association argues that this contract provision simply requires the College, through the mechanism of course reassignments, to maintain the full-time employment of faculty members. Absent this contract provision, the Association claims that certain full-time faculty members could be stripped of their status by the College for one or more semesters while the College utilized non-unit adjunct professors. The Association relies on *Rutgers, The State University*, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980) and *Borough of Belmar v. PBA Local No. 50*, P.E.R.C. No. 89-73, 15 NJPER 73 (¶20029 1988), aff'd NJPER Supp.2d 222 (¶192 App. Div. 1989).

This provision requires the College, through course reassignment, to ensure that faculty members make their workload even if there is not sufficient student enrollment to justify the workload. The determination of whether there is enough student enrollment to offer a course and assign a faculty member to teach that course is a matter of educational judgment. Therefore, this provision is not mandatorily negotiable. The Association's

concerns regarding work being shifted to non-unit adjuncts is addressed by the next sentence of this provision which sets out that "[e]very effort will be made in any displacement to impact adjuncts first, non full-time faculty employees second, and full-time faculty third."

With regard to provision IV, the College maintains that this contract provision infringes upon its prerogative to assign its employees as it deems appropriate to carry out the College's educational mission because it requires mutual agreement with faculty members. The College relies on Middlesex Cty. Coll., P.E.R.C. 78-13, 4 NJPER 47 (¶4023 1977), Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986), Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989) and Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981).

The Association questions whether, by seeking to eliminate this longstanding contract provision, the College is stating that it is sound educational policy to assign faculty members to subject areas they have not previously taught. The Association maintains that the existence of this contract provision simply requires mutual agreement before a faculty member could have his/her status as an educator at the College jeopardized as a

result of an arbitrary and unreasonable assignment to a subject area that is not within his/her expertise.<sup>3/</sup>

This contract provision requires mutual agreement regarding the assignment of teachers and therefore restricts the College's educational judgment to "deploy personnel in the manner which it considers most likely to promote the overall goal of providing all students with a thorough and efficient education." Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). In Jersey City Bd. of Ed., we found that a similar contract provision was not mandatorily negotiable. In pertinent part, that provision provided that "[t]eachers shall not be regularly assigned to teach subjects or grades outside the scope of their teaching certificate." We held that the provision was not mandatorily negotiable because teacher assignments are managerial prerogatives beyond the scope of negotiations. Similarly here, this provision is not mandatorily negotiable.

With regard to provision V, the College argues that this contract provision infringes on its exclusive authority to assess student needs in its distribution of class assignments. The College relies on Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), Jersey City Bd. of Ed., Rutgers, The State University, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991),

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<sup>3/</sup> The Association does not cite any authority for its position.

Rutgers, State University v. Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993).

The Association argues that ultimately the College has the exclusive authority to make scheduling changes based on its assessment of student and curriculum needs after consultations with faculty members. The Association notes that the Commission has issued many decisions holding that contract provisions only requiring consultation with employees relating to subject matter that would normally be viewed as representing a managerial prerogative are mandatory subjects for collective negotiations because consultative rights do not interfere with the ultimate determination of governmental/educational policy. The Association relies on State-Operated School District of the City of Paterson, Middletown Tp. Bd. of Ed., P.E.R.C. No. 98-74, 24 NJPER 19 (¶29013 1997), Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), Plainfield Bd. of Ed., P.E.R.C. No. 88-46, 13 NJPER 842 (¶18324 1987) and Delaware Tp. Bd. of Ed.

The first underlined portion of provision V states that the primary purpose of the semester schedule is to meet students' and curriculum needs. However, in the context of "promot[ing] the overall goal of providing all students with a through and efficient education," we have consistently held that educational institutions have a managerial prerogative to assess student needs. Jersey City Bd. of Ed.; Burlington Cty. Coll., P.E.R.C.

No. 2010-38, 35 NJPER 439 (¶144 2009). Further, we have consistently held that a public college has a managerial prerogative to determine curriculum and the type of classes to be offered. Burlington Cty. Coll., P.E.R.C. No. 2010-38, 35 NJPER 439 (¶144 2009); Middlesex Cty. Coll. As written, the first underlined portion of this contract provision is not mandatorily negotiable because it could subject the College's assessment of student and curriculum needs to binding arbitration if a faculty member grieved a course assignment based upon this article. Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Jersey City Bd. of Ed.

The second underlined portion of provision V requires the College "to honor" a faculty member's course and scheduling preference. Although a College may consider faculty preference, it "must...retain its prerogative to assign particular teachers to particular courses." Rutgers, The State University, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991), Union Cty. Coll. However, "[p]riority in schedules is mandatorily negotiable to the extent it means the right to determine one's work hours by choosing among different sections of the same course." Id. As written, the second underlined portion of this contract provision is not mandatorily negotiable to the extent it requires the College "to honor" rather than to simply consider faculty course assignment preferences.

The third underlined portion of provision V requires the College to resolve conflicts in schedule "in consultation with the affected faculty member(s)." As written, the third underlined sentence is a mandatory subject of negotiation because it only requires the College to consult with the affected faculty member regarding conflicts in schedule. State-Operated School District of the City of Paterson; Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Delaware Tp. Bd. of Ed.; Dunellen Bd. of Ed.

With regard to provision VI, the College argues that this contract provision is not mandatorily negotiable because it infringes upon its managerial prerogative to assign non-teaching duties. The College maintains that it is not required to reach mutual agreement with the Association regarding matters touching on its managerial prerogatives. The College relies on Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986) and Jersey City Bd. of Ed.

The Association argues that the requirement to "mutually agree" on reassignment does not significantly interfere with the determination of educational policy. Rather, it simply provides balance to the reassignment process to avoid instances where a faculty member may be assigned to maintenance or custodial operations or cafeteria services - assignments which the

Association contends are clearly outside the scope of employment for faculty members.<sup>4/</sup>

This provision sets out that when a faculty member's teaching schedule cannot be filled, the College and the faculty member must mutually agree regarding alternate work assignments. The right to assign teachers non-teaching duties is a non-negotiable management prerogative. Mahwah Bd. of Ed., P.E.R.C. 83-96, 9 NJPER 94 (¶14051 1983) (citing In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977)). However, "this right . . . is not unlimited" and "the issue is mandatorily negotiable" where "such assignments primarily affect the working hours, workload, or compensation of employees. . .". Ibid. Further,

It is not unusual for disagreements to arise in the educational setting which concern the performance of duties not directly related to actual classroom performance. In Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977), we drew a distinction between non-teaching duties (morning playground, bus, student lunch and recess duties) which relate to student safety, security and control and non-teaching duties involving custodial functions (moving furniture or supplies) which do not relate to student safety, security and control. The latter are mandatorily negotiable, the former are not. The reason for the distinction is obvious. When duties congruently involve the relationship of teachers and students, they are part of the teachers' primary functions of educating students and providing for their

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<sup>4/</sup> The Association does not cite any authority for its position.

welfare and educational policy is the dominant element. When, however, duties do not involve that relationship and instead are clerical or custodial, then the teachers' primary functions are not implicated and the mandatory subject of workload is the dominant concern.

We have also recognized that employees may be required to perform minor tasks incidental to their primary duties.

[Bayonne Bd. of Ed., P.E.R.C. No. 87-109, 13 NJPER 268 (¶18110 1987) (citations omitted)]

Contract provisions which require mutual agreement or permit union members to offer binding input regarding an employer's managerial prerogative are not mandatorily negotiable. State-Operated School District of the City of Paterson; Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Delaware Tp. Bd. of Ed.; Dunellen Bd. of Ed.

Therefore, we find that this contract provision is not mandatorily negotiable since it requires mutual agreement rather than consultation regarding non-teaching duties. However, to the extent any non-teaching reassignment affects a faculty member's working hours, workload, or compensation, same is a mandatory subject of negotiations. Mahwah Bd. of Ed. Further, we place no limitation on any faculty grievance challenging a non-teaching reassignment on grounds that same is beyond his/her primary duties. Id.

**WORK ENVIRONMENT**

The College disputes that the following underlined language in Article VII, Work Environment, is not mandatorily negotiable:

I) The College shall provide sufficient clerical support to meet the needs of the faculty.

II) Each full-time faculty member shall be provided with a computer, and appropriate software, as defined by the administration, which meets the needs of both the faculty member and the College, as it relates to College business."

With regard to provision I, the College argues that this contract provision must be removed because it strips the College of its managerial prerogative to insist that faculty perform minor clerical functions incidental to their normal tasks. The College relies on Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986), South Brunswick Tp. Bd. of Ed., P.E.R.C. No 85-60, 11 NJPER 22 (¶16011 1984).

The Association maintains that faculty members have always understood that the College is responsible for making determinations concerning the level of "clerical support" based upon the College's needs and budgetary limitations. Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989).

This contract provision requires the College to provide adequate clerical support to meet the needs of faculty. As

written, it is not mandatorily negotiable because it curtails management's prerogative to determine any necessary minor tasks incidental to a faculty member's primary duties. Bayonne Bd. of Ed. In Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), we found that a similar contract provision was mandatorily negotiable, however, it contained an additional clause. In pertinent part, that provision provided:

The college shall provide clerical support to meet the needs of academic personnel. The Vice President and Dean of the College shall make these determinations based upon needs and budgetary limitations.

We found that since the above clause retained the employer's right to assign clerical help based upon needs and budget limitations, its rights to insist that faculty perform minor clerical functions incidental to their normal tasks was preserved.<sup>5/</sup>

With regard to provision II, the College argues that it cannot be required to negotiate which supplies and materials are necessary to fulfill its educational mission. The College maintains that if a dispute arose over whether software or computer equipment met the needs of a particular faculty member, it could be forced to defend a matter that involves the College's exclusive right to determine which instructional equipment is

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<sup>5/</sup> This issue may be rendered moot because in its brief, the Association represented that it would agree to the addition of language similar to that found in Burlington Cty.

essential to implement educational policy in grievance arbitration. The College relies on Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), Delaware Tp. Bd. of Ed., In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977).

The Association claims that the College has preserved the absolute right to define what is meant by "appropriate software" and "a computer."

Colleges have a managerial prerogative to decide as a matter of educational policy which supplies, furniture and equipment are necessary for teaching staff. Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). This contract provision preserves management's prerogative to identify necessary equipment for teaching staff and is therefore mandatorily negotiable.

#### **VACANCIES AND PROMOTIONS**

The College asserts that the following underlined contract provisions in Article VIII are not mandatorily negotiable:

- I) The areas to be considered in evaluating faculty members for promotion and academic rank are:
  1. Teaching Effectiveness: Excellence in teaching and innovation in classroom methodology, demonstrated primarily through effective outcomes assessment of student learning.

2. Professional Growth: Professional development and scholarly achievement as demonstrated through conferences and workshops attended, graduate courses taken[,], publications, exhibitions, presentations, or involvement in professional organizations.

3. Institutional Service: College service such as non-compensated committee work, advising, mentorship, activities and involvement with peers and/or students, or contributions to campus life beyond instructional, scholarly or community activities.

4. Relevant Community Service: Service and/or outreach activities to the Warren County community, which brings the College to the community in a positive and constructive manner and demonstrates that the presence of the faculty person enriches not only the College but the community as a whole.

5. Departmental Service: Contributions to the department and/or division such as grant proposals, the development of new courses and/or curricula, etc.

6. Other relevant material such as letters of commendation, documentation of activities with students, and evidence of professional improvement should be included in the portfolio.

A candidate for promotion does not need to excel in all of the above areas to be successful in his/her application for promotion. Sufficient documentation/demonstration of a pool of material covering the six areas outlined above shall be deemed acceptable for the promotion to be granted.

II) Professional Standards Committee  
By February 15 of each year a Professional Standards Committee shall be formed. The Committee shall consist of two (2) tenured faculty members elected by the WCC Faculty

Association and two (2) administrators (preferably one member will be from Academics Administration) appointed by the President of the College. The Committee shall meet on or before April 15 of each year to consider and by majority vote recommend to the President candidates assessed as qualified and worthy for promotion in academic rank, including, as appropriate, those candidates whose distinguished contributions to WCCC make them worthy to have rank guidelines waived. The President shall transmit his/her recommendations regarding candidates for promotion to the Board of Trustees for consideration at the June Board meeting. The transmittal of the President's recommendations shall also include a copy of any professional recommendations from the Professional Standards Committee. Faculty members desiring to be considered for a promotion shall make an application to the Professional Standards Committee by January 31. Initiation of recommendation may also emanate from the President. The promotion shall be effective upon approval of the Board.<sup>6/</sup>

With regard to provision I, the College argues that this contract provision is clearly non-negotiable because it establishes the criteria upon which a candidate for promotion is measured. The College relies on *Essex Cty. Coll. and Rutgers, State University v. Rutgers Council of AAUP Chapters*, 256 N.J. Super. at 123-124.

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6/ Article VIII also includes a section entitled "Reduction in Force" that references N.J.A.C. 9A:7-2.1 through 9A:7-2.11. Given that the parties have expressed agreement regarding a change in the language of this contract provision, we find the issue raised by the College to be moot.

The Association maintains that this contract provision does no more than notify faculty members of the criteria that will be applied by the College when evaluating for promotional opportunities and tenure acquisition. *State v. State Troopers NCO Ass'n*, 179 N.J. Super. 80, 90 - 91 (1981).

Provision I is not mandatorily negotiable because it impermissibly infringes on the College's managerial prerogative to determine promotional criteria. *Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n*, 91 N.J. 38, 47 (1982).

With regard to provision II, the College maintains that this contract provision compels the President to submit the committee's recommendations to the Board of Trustees for consideration and, as written, provides the committee with more authority than the President to initiate recommendations for promotion. The College relies on *Bethlehem Tp. Bd. of Ed.*, 91 N.J. at 47, *Union Cty. Coll.*, and *Rutgers, The State University*, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991).

The Association maintains that the language at issue simply refers to procedural components of the promotional process by referring to non-binding recommendations from the Professional Standards Committee (PSC) relating to those candidates assessed as qualified and worthy for promotion. The Association argues that the role of the PSC is the functional equivalent of the Association's right to provide non-binding recommendations to the

College concerning curriculum issues, class size, and assignments, and notes that the PSC can only make recommendations to the President.<sup>7/</sup>

The first and second underlined parts of this provision set forth that the PSC will make recommendations to the President regarding promotional candidates, including the ability to recommend candidates deemed "worthy to have rank guidelines waived." It also requires that the President's recommendations to the Board include the recommendations of the PSC. "[A]n employer may not be required to negotiate over a proposal that promotional recommendations must come from a certain body."

N.J.I.T., P.E.R.C. No. 83-79, 9 NJPER 51 (¶14025 1982); see also, Brookdale Comm. Coll., P.E.R.C. No. 84-84, 10 NJPER 111 (¶15058 1984). In Brookdale Comm. Coll., we found that a contract provision similar to the first underlined portion here was not mandatorily negotiable. In pertinent part, that provision provided that "[t]he Institute Evaluation Committee shall review credentials and make recommendations for promotion." We held that this provision "concern[ed] the creation, composition, and functioning of an evaluation committee" and "would impermissibly require that promotional recommendations come from a certain body."

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<sup>7/</sup> The Association does not cite any authority for its position.

Rutgers, The State University, P.E.R.C. No. 81-57, 6 NJPER 546 (¶11277 1980), is also instructive in this instance. There we stated:

Under this committee system, the union, in effect, has a vote in the selection of candidates for the promotional pool. As the Commission discussed in Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), such provisions, by granting union members the right to assist management in making these decisions, go far beyond the procedures utilized in making a decision on promotions.

Although the PSC's recommendations are ultimately non-binding, if the contract provisions at issue here were permitted to remain in the contract, the College President's managerial prerogative to make the final selection of employees for recommendation would be partially usurped and permit the PSC to have an effective "vote" in the selection of candidates. Therefore, the first and second underlined parts of this contract provision are not mandatorily negotiable as they require that promotional recommendations come from the PSC and that the president must include the committee's recommendations to the Board.

The third underlined portion of this contract provision permits the initiation of recommendations for promotion to come from the President of the College. In Newark Bd. of Ed., P.E.R.C. No. 80-2, 5 NJPER 283 (¶10156 1979), we found that a

similar contract provision was not mandatorily negotiable. In pertinent part, that provision provided:

2. The Executive Superintendent, on the basis of his examination of the qualifications of the candidates and any other procedures which he may choose to employ, shall be the sole judge as to the individuals he may select for recommendation to the Board for the appointment to any such position.

We held that this provision was not mandatorily negotiable as it concerned the management prerogative of employee selection for promotion. Similarly, here, the third underlined section of provision II is not mandatorily negotiable.

#### **EVALUATIONS**

The College maintains that the following underlined language in Article IX, Evaluations, is not mandatorily negotiable:

- I) Self Evaluation:  
Each faculty member shall complete an annual professional self-assessment with short-and-long-term goals, as defined by the Administration; and each faculty member shall meet individually with the President and CAO in September to discuss his/her goals for the coming academic year and his/her accomplishments for the previous year. The written professional self-assessment with short-and-long-term goals must be submitted to the Chief Academic Officer or his/her designee no later than June 30.
  
- II) Elements of the Annual Evaluation:  
An annual evaluation shall be prepared to assess total performance and shall include, but not be limited to:
  - 1. The administrative and/or peer evaluation(s).
  - 2. The professional self-assessment with short-and-long-term goals.
  - 3. The student evaluations.

The College argues that the establishment of self-evaluation criteria for faculty members is not mandatorily negotiable. The College maintains that it is not required to negotiate evaluation criteria or the establishment of promotional criteria for faculty members because evaluation criteria, the personnel who conduct the evaluation, and how the role is fulfilled significantly impact the actual evaluation determination. The College relies on Burlington Cty. Coll., P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989), Bethlehem Tp. Bd. of Ed., 91 N.J. at 47 (1982), Essex Cty. Coll., P.E.R.C. No. 2007-46, 33 NJPER 19 (¶8 2007), Rutgers, The State University, P.E.R.C. No. 91-81, 17 NJPER 212 (¶22091 1991), State-Operated School District of the City of Paterson, Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9, 15-16 (1983), and Rutgers, State University v. Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993).

Relying on State Troopers NCO Ass'n, 179 N.J. Super. at 90 - 91, the Association argues that the subject provision does nothing more than notify employees as to how evaluations will be conducted.

These provisions require faculty members to complete an annual professional self-assessment with short and long-term goals as defined by the Administration and then set out specific elements of the evaluation. It is well-settled that there can be

no negotiations on the subject of criteria for evaluating teaching staff. N.J.S.A. 34:13A-5.3; see also Bethlehem Tp. Bd. of Ed., 91 N.J. at 46 - 47. In Burlington Cty. Coll., P.E.R.C. No. 2010-38, 35 NJPER 439 (¶144 2009), we found that a similar contract provision was not mandatorily negotiable. In pertinent part, that provision provided:

1. Each unit member will submit an Annual Performance Report and objectives for the next year to his/her immediate administrative supervisor by April 1. These objectives will include professional responsibilities, professional growth, College contributions and community contributions. This report shall be in a format and contain such information as directed by the College.

We held that the duty to prepare and submit a self-evaluation and list of goal objectives was not mandatorily negotiable because it relates primarily to non-negotiable evaluation criteria. Id. Similarly, these contract provisions which set forth the duty to prepare a self-evaluation and specific evaluation criteria are not mandatorily negotiable.

ORDER

-Article IV:

-provision I is not mandatorily negotiable.

-Article VI:

-provision I is mandatorily negotiable;

-provision II is not mandatorily negotiable to the extent it relates to faculty selection of particular courses but is mandatorily negotiable to the extent it relates to faculty selection of different sections of the same course;

-provisions III and IV are not mandatorily negotiable;

-provision V, the first and second sentences are not mandatorily negotiable but the third sentence is mandatorily negotiable;

-provision VI is not mandatorily negotiable to the extent it relates to non-teaching duties but is mandatorily negotiable to the extent those non-teaching duties affect working hours, workload, or compensation.

-Article VII:

-provision I is not mandatorily negotiable;

-provision II is mandatorily negotiable.

-Article VIII:

-provisions I and II are not mandatorily negotiable;

-Article IX:

-provisions I and II are not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Eskilson voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself. Commissioners Voos and Wall were not present.

ISSUED: January 28, 2016

Trenton, New Jersey