

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

Docket No. SN-77-26

-and-

CINNAMINSON TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board, the Commission was asked to address the legality of a reduction in force provision in the collective negotiations agreement between the Board and the Association. Initially, the Commission analyzes prior decisions of the Commission and the New Jersey courts concerning RIF. The Commission also reiterates its interpretation of N.J.S.A. 34:13A-8.1. That is, parties can negotiate concerning terms and conditions of employment, but only to the extent that such negotiations do not lead to any results which are inconsistent with provisions of specific statutes.

The Commission finds the following contractual clauses to be required subjects of negotiations: a provision requiring thirty (30) days notice prior to a public announcement of a RIF; a provision requiring notice to all teachers of their employment status by April 30th of each school year; a provision requiring adherence to the provisions of Title 18A when tenured teachers are not to be re-employed due to a RIF and when tenured teachers who were RIFed are to be recalled; a provision setting forth notice of recall to tenured teachers; a provision concerning retaining tenured teachers on a recall list; a provision concerning the rights of tenured teachers in filling vacancies; a provision concerning restoration of accumulated benefits upon reemployment of any teacher; a provision concerning placement on the salary guide upon reemployment of any teacher.

The Commission finds the following contractual clause to be a permissive subject of negotiations: a provision granting preference for substitute teacher assignments to teachers on reduction status.

The Commission finds the following contractual clauses to be illegal subjects of negotiations: a provision establishing a method for choosing non-tenured teachers who will not be reemployed

due to a RIF; a provision establishing a method for recalling non-tenured teachers; a provision setting forth notice of recall to non-tenured teachers; a provision concerning retention of non-tenured teachers on a recall list; a provision establishing a method for computing seniority of any teacher.

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Appearances:

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

For the Respondent, Goldberg, Simon & Selikoff, Esqs.
(Gerald M. Goldberg and Louis P. Bucceri, On the Brief,
Gerald M. Goldberg, at Oral Argument)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-77-26, was filed with the Public Employment Relations Commission on February 10, 1977, by the Cinnaminson Township Board of Education (the "Board") seeking a determination as to whether certain matters were within the scope of collective negotiations.

In its petition, the Board specifically requested a ruling on the negotiability of four issues that were included in the collective negotiations agreement in effect between it and the Cinnaminson Teachers' Association (the "Association") covering the period between July 1, 1976 through June 30, 1978. This particular agreement was ratified by the parties on or about September 16, 1976. These issues included a reduction-in-force provision set forth in Article XXV of the agreement;^{1/} the concept of a salary guide relating to teaching personnel; the concept of a salary guide for secretaries, clerks and

^{1/} A copy of this article is attached hereto as "Appendix A".

librarian aides; and a release time provision during the week before parent-teacher conferences.

On September 9, 1977, the Commission issued a decision^{2/} granting the Association's request to dismiss that part of the Board's scope of negotiations petition relating to a salary guide for teaching personnel and for secretaries, clerks, and librarian aides. The Commission found that there was no dispute regarding these matters.^{3/} In addition, the decision denied the Association's request to dismiss that part of the Board's scope of negotiations petition relating to the issue of reductions in force. The release time issue had been withdrawn by the Board.

In attempting to answer this scope of negotiations issue in regard to reductions in force (RIF), an analysis of prior decisions by this Commission and by the New Jersey courts is necessary to understand the present state of the law.

The central issue in these decisions has been the impact of the RIF decisions on the terms and conditions of employment of employees. It must be emphasized that in these cases majority representatives have not contested the unilateral managerial authority vested in boards of education to determine that a reduction in force is necessary, what the extent of that reduction would be, or what types of positions would be eliminated to implement such decisions. The issue which is claimed to be within the scope of negotiations

^{2/} P.E.R.C. No. 78-11, 3 NJPER 323 (1977).

^{3/} N.J.S.A. 34:13A-5.4(d) authorizes the Commission to render scope determinations when there is a matter in dispute.

arises when a selection of teachers must be made to implement the managerial decision to effectuate a RIF.

Within this framework if an entire program or department were to be eliminated, no selection would need to be made and therefore no problem would arise. On the other hand, if some, but not all, employees in a program or department are to be denied continued employment due to a RIF, a selection must occur. It is this selection procedure which employee organizations have contended is within the scope of negotiations because the results of this procedure determine who has a job and who does not have a job. No decision can have a greater effect on terms and conditions of employment.

In In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), the Commission held that the number of employees needed to achieve an employer's function is a basic managerial decision which need not be negotiated with an employee representative. But the Commission did find that the impact of such a managerial decision on the terms and conditions of employment was a mandatory, and not illegal,^{4/} subject of negotiations. The Commission illustrated its holding with the following hypothetical:

If, for example, the University decides that there will be 100 fewer teaching positions next year, it must negotiate the impact of that decision but not the decision itself. That decision will impact in two major ways in all likelihood: upon the 100 employees who are not retained (assuming not all of the reduction is achieved through attrition) and upon the workload of those remaining (assuming a less than proportionate decline in enrollment.) To the extent that the stated assumptions are valid,

^{4/} 2 NJPER 13 at 18.

the University would be required to negotiate the impact of that decision on the terms and conditions of employment of affected employees.
P.E.R.C. No. 76-13 at p. 20, 2 NJPER 13 at p.18.

The Commission followed this line of reasoning in In re Council of N. J. State College Locals, P.E.R.C. No. 76-33, 2 NJPER 147 (1976) wherein it was found that a decision to regulate the proportion of tenured to non-tenured faculty members was not a required subject of negotiations. Yet, the Commission ordered the employer to negotiate in good faith, upon demand by the employee representative, the impact of that decision on the terms and conditions of employment. The Commission illustrated what it meant by the impact of such decisions by listing matters which the employees might wish to negotiate with the employer. Among the suggested areas of possible mandatorily negotiable issues were the procedures for selection of teachers to be terminated and the establishment of preferential hiring lists for re-employment of those terminated teachers.

In a third relevant Commission matter, which was a consolidated proceeding involving the Union County Regional High School Board of Education, the Cranford Board of Education and the respective Education Associations,^{5/} the Commission was once again presented with this dichotomy between decisions deemed to be related to managerial prerogatives and the negotiability of the impact or effect of such decisions upon terms and conditions of employment.^{6/} In these cases,

^{5/} In re Union County Regional High School Board of Education, P.E.R.C. No. 76-43, 2 NJPER 221 (1976), reversed, sub. nom. Union County Regional High School Teachers Ass'n Inc. v. Union County Regional High School Board of Education, 145 N. J. Super. 435 (App. Div. 1976), certif. denied 74 N.J. 248 (1977).

^{6/} In Byram Tp. Bd. of Ed. and Byram Ed. Assn., 152 N.J. Super. 12 (1977) the Appellate Division upheld the appropriateness of the analysis, i.e. certain decisions are managerial decisions which need not be negotiated but the effect of these decisions on employees' terms and conditions of employment is mandatorily negotiable.

the teachers' organizations charged that the boards of education refused to negotiate the impact of RIF upon the terms and conditions of employment of affected teachers. The Executive Director of the Commission, who is now its Chairman, granted interim relief, ordering the respective boards to negotiate, upon demand, concerning the methods for selecting teachers to be terminated and to negotiate, upon demand, concerning re-employment provisions for teachers who were to be terminated. After a series of motions and cross-motions, the Appellate Division heard the case on the actual merits of the underlying dispute.

The position taken by this Commission in defense of its decision was that the effects of the RIF decisions by the boards of education had as direct and substantial an impact as any employer decisions could possibly have on the terms and conditions of employment. Therefore, the boards of education could be obligated to negotiate^{7/} the impact of the RIF without impairing the educational policy considerations made by the boards of education in formulating their decisions. Once again, it was clearly expressed that management had the unilateral authority to reduce the number of teachers and that this management decision was not being contested. The negotiability of the impact of such a decision with its attendant consequences on employees' terms and conditions of employment was the key issue which this Commission had found to be within the scope of required negotiations. The impact of the RIF decision concerned

^{7/} The obligation to negotiate does not entail the obligation to agree or to concede. Byram, supra at 30.

the selection of the teachers to be RIFed from among the pool of competent non-tenured teachers similarly situated and the re-employment rights of those competent non-tenured teachers should their abolished positions be re-established.

Unpersuaded, the Appellate Division held:

Whatever may be the breadth of the authority of P.E.R.C. under N.J.S.A. 34:13A-1, et seq. it does not extend to a grant of the power to compel a public employer to negotiate upon the subjects here in dispute, which the Legislature has expressly and by clear implication delineated by statute.

Consequently, where as here local boards of education have determined to reduce their personnel under N.J.S.A. 18A:28-9, and to accomplish such reductions in personnel by the non-renewal of the teaching contracts of a portion of their entire forces of non-tenured teachers, neither P.E.R.C. nor its designee the executive director, singly or in combination, is empowered to compel the local boards of education to negotiate the criteria or guidelines to govern the boards in making the selection of the specific individuals whose contracts are not to be renewed, or to negotiate for reemployment rights of those teachers selected for non-renewal.

145 N.J. Super. 435 (1976) at 437; certif. den. 74 N.J. 248 (1977)

In Board of Education of the City of Englewood and Englewood Teachers' Association, 150 N.J. Super. 265 (App. Div. 1977), certif. den. ___ N.J. ___ (1977), the board decided to terminate forty non-tenured teachers. The teachers' association filed a grievance, seeking employment contracts for the teachers who were not given contracts. The association claimed that various contractual provisions concerning evaluation and fair dismissal procedures had not been complied with by the board. In the appellate argument, this Commission supported its previous decision, In re Englewood

Teachers' Assn., P.E.R.C. No. 76-23, 2 NJPER 72 (1976), by arguing that the matter in dispute was the alleged failure of the board to comply with the evaluation and fair dismissal procedures, and not the termination of the teachers. These procedures, the Commission found, were within the scope of required collective negotiations, while the decision to terminate 40 teachers was a management prerogative.

Once more, the Court was not convinced. The Court found that as a matter of law there was no issue relating to negotiability. The Court found that the board of education had the statutory power to reduce personnel (pursuant to N.J.S.A. 18A:28-9) and any charge of discrimination or arbitrariness in the dismissal of any teacher is properly reviewed under the School Laws by the Commissioner of Education (N.J.S.A. 18A:6-9). The Court, citing Union Cty, supra, held:

The determination not to renew the contract of a non-tenured teacher is a discretionary matter for the local board and where it results from a reduction in force there exists no right of re-employment. See Union Cty Bd. of Ed. v. Union Cty. Teachers Assn., 145 N.J. Super. 435 (App. Div. 1976), certif. denied 74 N.J. 248 (1977). As a corollary, the statutory power to reduce personnel as authorized in N.J.S.A. 18A:28-9 cannot be the subject of negotiation or arbitration.
150 N.J. Super. 265 at 270.

Thus, boards of education have the unfettered power to deny renewal contracts to non-tenured teachers and cannot be compelled to negotiate the procedures for the selection of those non-tenured teachers who are to be terminated. This is the state of the law today. The Court in Union County and Cranford, supra, has clearly stated that non-tenured teachers have no right to the renewal of their contracts nor do they have any re-employment rights. N.J.S.A. 18A:28-5,

9, 10, 11, 12. ^{8/}

Finally, in In re Board of Trustees of Middlesex Co. College and Local 1940, A.F.T. (AFL-CIO), P.E.R.C. No. 78-26, 3 NJPER ___ (1977), this Commission was again confronted with this issue but subsequent to the Union County and Englewood decisions, supra. In this case, a non-tenured teacher who was issued a one-semester contract was notified that her contract would not be renewed. A grievance was filed. The college contended that arbitration of this grievance under the contract was inappropriate as the provision underlying the arbitration was null and void. The college cited Union County, and Englewood, supra, as precedent. The AFT was unable to distinguish these cases and the Commission held:

Although the Commission's earlier determination relating to reemployment rights for retrenched non-tenured teachers obviously differed from the judiciary's assessment of the negotiability of this issue, we now are obligated to follow the mandate of the Union County and Englewood decisions. We believe that with reference to those issues addressed by the Appellate Division in these decisions, i.e., the decision to RIF nontenured teachers whose contracts were not to be renewed pursuant to a RIF, and the reemployment rights of riffed teachers, we must find that these matters relate to illegal subjects for collective negotiations.
at p. 6.

We turn now to the specifics of the instant case and to a consideration of Article XXV, Reduction in Force, of the agreement

8/ One of the arguments made by the Association in this case is that the Appellate Division in Union County, supra, held that the Commission could not compel negotiations regarding these matters, thereby preserving the possibility of permissive negotiations. We reject that argument in part because of the subsequent Englewood decision supra but moreover because the Appellate Division decision did not turn upon whether the subject was mandatory or permissive but rather upon the existence of statutes which, according to the Court, deprive the employer of discretion or authority with respect to these matters. It is the existence of the statutory provision in Title 18A that the Court relied upon rather than our determination that the subject matter involved terms and conditions of employment, thereby making it a mandatory as opposed to a permissive subject.

between the parties. An examination of that article reveals that sections B3 and C2 relate to the layoff and reemployment of non-tenured teachers. The Commission is constrained to find these sections to be illegal in accordance with our decision in Middlesex County College, supra. Therefore, these sections are null and void.

In considering the other provisions of the article, an analysis of N.J.S.A. 34:13A-8.1^{9/} as set forth in Chapter 123, Public Laws of 1974 is necessary.

In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER 303 (1977), the Commission set forth a definitive interpretation of Section 8.1. That decision reads in part:

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

that the parties in a bargaining relationship were permitted [and required when concerning mandatory subjects] to negotiate regarding, inter alia, terms and conditions of employment even if statutory language existed on the subject matter, but only to the extent that the negotiations did not modify or contravene statutes that have specifically limited the authority of the public employer on the subject.

In re State of New Jersey (Local 195), supra, at p. 17.

The Commission concluded its review of the amendments to Section 8.1 and held that:

^{9/} That section provides in pertinent part as follows: "...nor shall any provision hereof annul or modify any pension statute or statutes of this State."

5/ In re State of New Jersey (Local 195), P.E.R.C. No. 77-57, 3 NJPER 118 (1977), appeal pending Docket No. A-3809-76, and In re State of New Jersey (State Supervisory Employees Association, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), appeal pending, Docket No. A-4109-76. the change in N.J.S.A. 34:13A-8.1 means that general statutes giving authority to employers are not to be read as shields to the employer's obligation to negotiate regarding terms and conditions of employment, but specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations. In re State of New Jersey (Local 195), supra, at p. 18.6/

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

Generally the parties can negotiate concerning terms and conditions of employment, but only to the extent that such negotiations do not lead to any results which are inconsistent with provisions of specific statutes regarding terms and conditions of employment.

Returning to Article XXV and keeping the above analysis in mind, Section A, Procedure, provides that the Association shall be given at least thirty (30) days' notice prior to any public announcement by the Board of a RIF. The Commission has held in previous cases ^{10/} that "fair dismissal procedures" are a mandatory subject for negotiations because a managerial decision to not offer re-employment has the most vital impact on terms and conditions of employment. ^{11/} In these cases, the procedures provided, inter alia, for timely notice of non-renewal, statement of reasons for non-renewal and a hearing

10/ In re Bd. of Ed. of City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976) (rev'd on other grounds, 150 N.J. Super. 265 (App. Div. 1976); In re Plainfield Bd. of Ed., P.E.R.C. No. 76-45, 2 NJPER 216 (1976); In re Wyckoff Bd. of Ed., P.E.R.C. No. 77-41, 3 NJPER 79 (1977); In re W. Orange Bd of Ed., P.E.R.C. No. 78-19, 3 NJPER _____ (1977).

11/ In re Maywood Board of Education, P.E.R.C. No. 78-23, 3 NJPER _____ (1977). An appeal has been filed.

before the Board of Education. In the instant matter, Section A, Procedure, is simply a procedural matter and has no counterpart in Title 18A to do with the reduction in force. It is a notice provision similar to the timely notice provisions of the fair dismissal procedures (see footnote 10). Therefore, as this is a procedural matter relating to the terms and conditions of employment, it is a mandatory subject of negotiations which is not covered by Title 18A. This holding is consistent with a number of our earlier decisions.

Section B 1 of Article XXV provides that all teachers shall be notified of their employment status by April 30th of each school year. This provision is identical to that embodied in N.J.S.A. 18:27-10 which applies to both tenured and non-tenured teachers. The notice requirement in Article XXV is no different from that which the law already requires. The effect of its inclusion in the contract is to provide another forum for the resolution of a dispute concerning this notice. N.J.S.A. 34:13A-5.3. Absent this provision, the Commissioner of Education would resolve any disputes arising under Title 18A. But with the amendment of N.J.S.A. 34:13A-5.3,^{12/} grievance procedures established by agreement of the parties shall be utilized for the resolution of disputes covered by the provisions of the agreement.^{13/} In the face of N.J.S.A. 34:13A-8.1, the parties here could not have annulled or modified N.J.S.A. 18A:27-10. The issue concerns a procedural notice which will have a pronounced effect on employment

^{12/} This section was amended by c. 123 of the Public Laws of 1974.
^{13/} Red Bank Bd. of Ed. v. Warrington, 138 N.J. Super. 564 (App. Div. 1976).

status. As we have consistently held that procedural matters relating to terms and conditions of employment are mandatory subjects of negotiations, the section is a mandatory subject of negotiations.

Section B2 and Section C1 of Art. XXV stipulate that Title 18A will be adhered to when tenured teachers are not re-employed due to a RIF and when they are recalled. Once again, this section does not and could not annul or modify any provisions of Title 18A, and its only effect is to provide another forum for the resolution of a dispute concerning the adherence thereto. Termination, whether as a result of a RIF decision or not, and re-employment rights are terms and conditions of employment. As such, the inclusion of these sections is a mandatory subject of negotiations provided that such negotiations do not reach a result contrary to any applicable statute.

Section C3 and Section C4 are procedural matters dealing with notice of recall and retention on a recall list. As both sections are purely procedural and have no counterpart in Title 18A, these sections are mandatory subjects of negotiations as they relate to the impact of a RIF decision on the terms and conditions of tenured teachers. Since the impact of a RIF decision on the terms and conditions of non-tenured teachers is an illegal subject of negotiations,^{14/} these sections are only applicable to tenured teachers and are null and void insofar as non-tenured teachers are concerned.

14/ Union Cty, supra.

Section C5 of Article XXV provides that no vacancy in a bargaining unit position will be filled before the procedure in Article XXV has been followed. This section guarantees that a teacher who has had his/her position eliminated by a RIF decision will be offered re-employment before the position is offered to a first-time teacher. Once again, we find that the impact of a RIF decision has an effect on the terms and conditions of employment of tenured teachers. However, N.J.S.A. 18A:28-12^{15/} provides that a tenured teacher who has been RIFed is entitled to be placed on a preferred eligible list in the event a vacancy occurs. The board is bound by this statute and could not negotiate a result contrary to it. Since this issue has an impact on terms and conditions of employment of tenured teachers, it is a mandatory subject of negotiations consistent with the statute. But as applied to non-tenured teachers, this must be found to be an illegal subject for negotiations, for the reasons cited above.

Section D 1 of Article XXV deals with the reinstatement of unused accumulated sick leave and credits toward sabbatical eligibility upon the re-employment of a teacher who had previously been RIFed. The courts have held that "Sabbatical leave is clearly a term and condition of employment. It

^{15/} That section provides: "If any teaching staff member shall be dismissed as a result of such reduction, such person shall be and remain upon a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such person shall be qualified and he shall be reemployed by the body causing dismissal, if and when such vacancy occurs and in determining seniority, and in computing length of service for reemployment, full recognition shall be given to previous years of service, and the time of service by any such person in or with the military or naval forces of the United States or of this state, subsequent to September 1, 1940 shall be credited to him as though he had been regularly employed in such a position within the district during the time of such military or naval service."

is akin to wage and vacation benefits." S. Orange-Maplewood Ed. Assn v. Bd of Ed So. Orange and Maplewood, 146 N.J. Super. 457, 462 (App. Div. 1977). Likewise, sick leave is a term and condition of employment and thus a mandatory subject of negotiations. In re Hillside Bd of Ed, P.E.R.C. No. 76-11, 1 NJPER 55 (1975); In re Cliffside Park Bd of Ed, P.E.R.C. No. 77-2, 2 NJPER 252 (1976). While the RIF decision is a management prerogative, the impact of such a decision is mandatorily negotiable. As to tenured teachers, Section D1 is a mandatory subject of negotiations. Non-tenured teachers have no right to re-employment. Cf. Union Cty., supra. But this section of Article XXV is only concerned with the restoration of benefits upon re-employment. Since nothing in Title 18A precludes such a provision,^{16/} this reinstatement of benefits is a mandatory subject of negotiations for it affects terms and conditions of employment of non-tenured teachers. As the language of the article makes clear, this provision in no way affects the accrual of tenure.

Section D2 of Article XXV provides that re-employed teachers shall be placed on the step of the salary guide based on their years of experience. Salary is a term and condition of employment. N.J.S.A. 18A:29-9 provides: "Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, his initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing board of education." Clearly, Section D2 does not contravene or annul the statute. Since the right to re-employment is not guaranteed and the provision only

^{16/} In fact, the statute (N.J.S.A. 18A:30-3.2) permits an employing board to grant full or part credit of unused accumulated sick leave when a teacher changes school districts.

establishes the appropriate placement on the salary guide, the subject matter of this provision is a mandatory subject of negotiations for both tenured and non-tenured teachers.

Section D3 provides that substitute teacher positions shall be offered to all teachers on reduction status. This issue has been considered in several judicial decisions. In Bd. of Ed. of the Township of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976), a provision of the collectively negotiated agreement, which was entered into prior to the effective date of Chapter 123, Public Laws of 1974 on January 20, 1975, provided that promotions should be made from within the system if staff members were certified and qualified. The Court found that this issue did not involve a term and condition of employment. The Court concluded,

...the issue of the board's right to select candidates from either within or without the system involves major educational policy and as such must be considered a managerial prerogative. The board, in seeking the best qualified candidates for promotions, should not be restricted in its search to the faculty of the North Bergen schools. Since we do not regard this issue to involve a term and condition of employment, it is neither negotiable nor arbitrable.
at 103 and 104.

The Appellate Division, citing North Bergen, supra, reaffirmed that holding in In re Byram Township Board of Education, 152 N.J. Super. 12 (App. Div. 1977): "As for the matter of preference, what we said on the subject in North Bergen Tp. Bd. of Ed. v. North Bergen Fed. Teachers, supra, is applicable here." at 27. Significantly, however, the court went on to state as follows:

We conclude, therefore, that, except for the posting of vacancy notices [which was held to be mandatorily negotiable], the remainder of the proposals [relating to selection] under this heading are matters of major educational policy on which the board may not be compelled to negotiate.
at 27.

The dispute in Byram, supra, arose after the effective date of the Chapter 123 amendments. Therefore, following Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (App. Div., May 3, 1976, unreported), the Chapter 123 amendments applied in Byram, supra and they apply to the instant matter.^{17/}

We have held that the effect of those amendments was not only to extend the scope of the grievance/arbitration process to make it co-extensive with the scope of matters which can be negotiated and included in a collectively negotiated agreement and, therefore, enforced, but also to permit negotiations or, in the case of terms and conditions of employment, compel negotiations regarding all matters which are within the authority or discretion of public employers, i.e. which are not illegal.^{18/}

Relating the above to the issues of the negotiability of preferences for substitute assignments to teachers on reduction status, the board, given Byram, supra, cannot be compelled to negotiate regarding this matter but the board may agree to negotiate thereon.

^{17/} See In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976) for a full discussion of this analysis.

^{18/} See, e.g. In re Ridgefield Park Board of Education, supra.

This matter is within the discretion of the board and while not mandatorily negotiable, it is permissibly negotiable and we so hold and determine.

Section E of Article XXV provides a method for computing seniority. N.J.S.A. 18A:28-10 delegates to the Commissioner of Education the power to establish standards for determining seniority. N.J.S.A. 18A:28-11 states that "...in the case of any such reduction the board of education shall determine the seniority of persons affected according to such standards." "Such standards" are to be established by the Commissioner of Education pursuant to N.J.S.A. 18A:28-13. Seniority as it relates to layoffs and re-employment rights is a term and condition of employment which, as such, is a mandatory subject of negotiations, barring the existence of factors which render the subject non-negotiable. In re State of New Jersey (Local 195), P.E.R.C. No. 77-57, supra. The factor which would render the subject non-negotiable is a statute to the contrary. Section E, though a result of collective negotiations, is inconsistent with the provisions of Title 18A which delegates to the Commissioner of Education the responsibility to establish the seniority standards. In light of these statutory provisions, the subject is an illegal subject for negotiations as it is contrary to the provisions of Title 18A and it is beyond or outside the authority of the board.

At oral argument before us on December 20, 1977, the Board for the first time addressed the individual subsections of Article XXV which have been addressed above. The Board contended, in general,

that where Title 18A is specific and clear, a board of education cannot legally bind itself through negotiations. The Board also argued that absent specific legislation permitting negotiations, a board of education cannot negotiate. This Commission cannot agree with these broad statements. It is the position of this Commission that parties can and must negotiate concerning terms and conditions of employment, but only to the extent that such negotiations do not lead to any results which are inconsistent with provisions of specific statutes regarding terms and conditions of employment. See In re Ridgefield Park Board of Education, supra. Therefore, the subsections of Article XXV which incorporate sections of Title 18A or which provide results not contrary to Title 18A are not null and void by reason of the failure of Title 18A to provide for negotiations on that specific subject matter.

ORDER

Based upon the above discussion, the Public Employment Relations Commission hereby determines that those issues hereinabove held to be either required or permissive subjects for negotiations are properly included in the collectively negotiated agreement between the parties and such provisions are enforceable in accordance with that agreement and applicable law.

With respect to those matters which the Commission has hereinabove determined to be illegal subjects for collective negotiations, these provisions are hereby decided to be null, void and unenforceable parts of the parties' agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

DATED: Trenton, New Jersey
January 19, 1978
ISSUED: January 24, 1978

APPENDIX "A"

ARTICLE XXV

REDUCTION IN FORCE

A. PROCEDURE

The Association shall be notified of any anticipated reduction in force at least thirty (30) days prior to the Board's public announcement in order to allow for an Association consultation with the Board of Education.

B. SELECTION OF TEACHERS AFFECTED

1. All teachers shall be notified of their employment status no later than April 30th of each school year.

2. Any reduction in force of tenure teachers shall be in accordance with N.J.S.A. 18A:28-9 et seq.

3. Any reduction in force of nontenured teachers shall be based on seniority in the Cinnaminson School District.

C. RECALL OF TEACHERS AFFECTED

1. Tenure teachers shall be recalled in accordance with 18A:28-9 et seq.

2. Nontenured teachers will be recalled in inverse order of seniority.

3. Notice of recall will be given by registered mail to the last address given to the Board by the teacher. If the teacher fails to respond within ten (10) days after receipt of the above notice of recall, the teacher will be deemed to have refused the position offered.

4. A teacher who is laid off will remain on the recall list for two (2) years after the effective date of layoff unless the teacher:

- a. waives recall rights;
- b. resigns;
- c. fails to accept recall to the position offered.

5. Notwithstanding any other provision of this Agreement, no vacancy in a bargaining unit position shall be filled by any other person until the procedure set forth in this Article has been followed.

D. REEMPLOYMENT RIGHTS

1. All benefits accumulated to which a teacher was entitled at the time of reduction in force, including unused accumulated sick leave and credits toward sabbatical eligibility will be restored to the teacher upon return to active employment, except no nontenured teacher may accrue tenure unless requirements under Title 18A are fulfilled.

2. Teachers who are reemployed shall be placed on the proper step of the salary guide based on their years of experience, unless they are recalled with less than one-half (1/2) year remaining.

3. All Positions of substitute teacher shall be offered to all teachers on reduction status, and they shall have preference in filling such positions providing that they hold the proper grade level certification for such a position.

E. SENIORITY

For the purpose of this Article, seniority will be computed from a teacher's date of hire and will begin to accrue as of the first

(3)

day of actual service in the bargaining unit. Seniority will continue to accrue during all paid leaves of absence and for a period of two (2) years from the effective date of layoff except nontenured teachers must comply with Title 18A in order to acquire tenure. When seniority is equal among teachers, the ranking of those teachers shall be determined by the drawing of lots.