

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2000-80

CITY ASSOCIATION OF SUPERVISORS
AND ADMINISTRATORS, AFSA/AFL-CIO,
LOCAL 20,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of several provisions in an expired collective negotiations agreement between the State-Operated School District of the City of Newark and the City Association of Supervisors and Administrators, AFSA/AFL-CIO, Local 20.

The Commission finds the following to be not mandatorily negotiable: a proposal that would require replacement of an absent vice-principal with a teacher; a proposal that addresses working conditions of teachers not in CASA's unit; proposals that would require the District to fill vacancies; a proposal concerning elevating vice-principals to acting principals in the case of an absence of a principal for more than 10 days; a portion of a proposal that provides that an Assistant Director will fill in for the Director; proposals that require the maintenance and/or establishment of specific supervisory positions; and a clause that would require the District to hire additional clerical employees to meet the proposal's staffing requirements.

The Commission finds the following to be mandatorily negotiable: proposals that provide a procedural opportunity for a supervisor to recommend that a vacancy be filled by a qualified employee; and portions of proposals that pertain to compensation for working in a higher pay category.

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.

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Appearances:

For the Petitioner, Sills, Cummis, Radin, Tischman,
Epstein & Gross, P.A., attorneys (Lester Aron, of
counsel; Brigitte N. Shrank, on the brief)

For the Respondent, Lindabury, McCormick & Estabrook,
P.C., attorneys (Anthony P. Sciarrillo, on the brief)

DECISION

On February 2, 2000, the State-Operated School District of the City of Newark petitioned for a scope of negotiations determination.^{1/} The District seeks a determination that several provisions in an expired collective negotiations agreement between it and the City Association of Supervisors and Administrators, AFSA/AFL-CIO, Local 20 ("CASA") are not mandatorily negotiable. CASA has proposed carrying these provisions over into a successor contract.

^{1/} On February 23, the District amended the petition to set forth a clear statement of each provision in dispute.

The parties have filed briefs and exhibits. These facts appear.

CASA represents administrators and supervisors. Included titles are: principals, vice principals, instructional directors, assistant instructional directors, instructional supervisors, central office coordinators, department chairpersons, department chairpersons-athletic, head guidance counselors, curriculum specialists, and anyone serving in an acting capacity in any of the titles for thirty (30) or more days.

The parties' last collective negotiations agreement expired on June 30, 1998. During negotiations for a successor agreement, disputes arose concerning the negotiability of several provisions.^{2/} This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which

^{2/} The District filed a scope of negotiations petition on July 7, 1999 (SN-2000-5) seeking a negotiability determination of several provisions, among them the staffing provisions identified in this petition. On December 17, 1999, the Commission decided SN-2000-5. However, because the District's objections had not been particularized, the Commission declined to rule on these provisions. P.E.R.C. No. 2000-51, 26 NJPER 66 (¶31024 1999).

might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

We consider only the abstract negotiability of the disputed clauses. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

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 404-405]

The District disputes the negotiability of several provisions pertaining to staffing and temporary assignments. The District asserts that it has a managerial prerogative to determine efficient staffing levels, assign staff and determine qualifications for those assignments. It contends the disputed staffing provisions strip the District of its managerial

prerogative to assign personnel. It claims that the clauses are illegal to the extent they dictate the manner in which temporary vacancies are filled and direct the use of substitutes. The District also contends that the provisions impinge on its managerial right to select candidates from within or outside the school district.

CASA concedes that the District has the right to determine staffing levels and whether to fill a vacancy. It asserts, however, that the provisions relate to procedural aspects of staffing and the impact on compensation that would result from such action, or promote efficient staffing.

The disputed provisions raise several issues including whether temporarily vacant positions should be filled, the method used to choose among qualified employees to fill such positions, whether an employee can refuse a temporary assignment to a supervisory position, how the position of the reassigned employee shall be filled, and compensation for employees temporarily assigned to higher paying positions.

In general, a public employer has substantive right to decide whether or not to fill a vacancy. Vacancies, however, have an impact on the workload of other employees and to the extent those employees seek a procedural right to express their interest in having vacancies filled, a contract provision may be mandatorily negotiable. In addition, the terms and conditions of employment of employees filling vacancies are, in general,

mandatorily negotiable. Within this context, we now consider each of the provisions at issue.

Article XIV is entitled Principals - Status and Terms of Employment. Section E provides:

1. In case of the absence of a vice-principal, the Principal may elect a teacher of his staff to provide assistance for the day, and the Principal is authorized to replace such teacher for that day with a pool substitute or a per diem substitute.
2. Any teacher so elected shall accept the assignment voluntarily and shall perform no special administrative or supervisory functions or assume any administrative or supervisory authority, but shall perform only such functions as may ordinarily be assigned to a teacher or performed by a teacher voluntarily.
3. Should such absence continue beyond a period of three (3) days, the Principal shall consult with the appropriate Assistant Superintendent concerning a replacement to perform the vice principal's services.

The District asserts that Section E1 divests it of its managerial prerogative to make assignments. It specifically asserts that the portion which provides for the replacement of a vice-principal by a teacher interferes with its right to determine how, or if, a vacancy is filled. It maintains that the portion which provides that a teacher be replaced with a substitute also interferes with its right to fill or not fill a vacancy with staff or substitutes. It asserts that the decision to hire substitutes is non-negotiable.

CASA asserts that the Section E1 primarily addresses workload issues and does not impede the District's managerial

prerogative to make temporary assignments, determine staffing levels, or set the qualifications for candidates for vacancies. It contends that the provision is mandatorily negotiable because it does not compel the District to hire a substitute or fill a vacancy temporarily. It further asserts that increased workload that results from a staffing decision is mandatorily negotiable.

The District disputes CASA's assertion that increased workload and the impact of a decision to fill or not fill a vacancy make this provision mandatorily negotiable.

The District asserts that Section E2 is not negotiable because it makes an emergency assignment voluntary and limits the duties that may be required of a teacher acting as a vice-principal in an emergency. It asserts that when an emergency exists, the District has the right to control the duties of the staff.

CASA asserts that Section E2 is mandatorily negotiable because it deals with the duties to be performed temporarily by non-unit personnel. It asserts that employees have a mandatorily negotiable interest in having vacancies in their titles filled by employees holding the same title within the negotiations unit and that the employees have an interest in ensuring that employees outside the unit do not assume duties traditionally performed by employees in the unit.

The District disagrees with CASA's assertion that Section E2 involves the preservation of unit work. It asserts that this

section deals with the District's needs to fill vacancies for short-term staff shortages or in emergencies.

The District asserts that Section E3 is not negotiable because it determines how and whether vacancies shall be filled and impermissibly sets a time limit on the District's decision to find a replacement.

CASA asserts that Section E3 is mandatorily negotiable because it merely directs a principal to consult with the assistant superintendent about a replacement. It contends that this section allows the principal to bring to the District's attention the impact of a continuing vacancy on the school's operations and to provide input on the appropriate candidate. CASA asserts that the provision does not mandate that a position be filled, set a timetable for filling the position, or impose any qualification requirements.

Section E1 applies only to situations where the District has already decided that a vice-principal should be permanently assigned so it does not affect any permanent staffing decisions. And, when read in conjunction with Section E3, it applies to temporary assignments of three days or less. Most of the cases cited by the District involved situations where boards of education had decided to cover or fill the positions of temporarily absent teachers or administrators and sought the right to determine what type of employee should fill the vacancy. See Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78

(¶18036 1987); Willingboro Bd. of Ed., H.E. No. 90-12, 15 NJPER 592 (¶20242 1989), adopting recommendation to dismiss P.E.R.C. No. 90-43, 15 NJPER 692 (¶20280 1989); Long Branch Bd. of Ed., P.E.R.C. No. 95-1, 20 NJPER 314 (¶25157 1994); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. den. 111 N.J. 600 (1988). But, workload and compensation issues were determined to be severable and compensable. See, e.g., Hamilton Tp. Bd. of Ed. where the Commission and the Appellate Division held that the Board committed an unfair practice by refusing to negotiate over the rate of compensation to be paid to an administrator it had involuntarily assigned to teaching duties to cover a staffing shortfall. Here the District envisions that it may decide not to fill the temporary vacancy. Bloomfield Bd. of Ed., P.E.R.C. No. 93-95, 19 NJPER 242 (¶24119 1993), aff'd 20 NJPER 324 (¶25165 App. Div. 1994) confirms that a board of education has a non-negotiable prerogative to leave a position unfilled but must negotiate the severable consequences of that decision on employee workload and/or compensation. There the Board, during the middle of the school year, eliminated the principal's position at a small elementary school and assigned the task of supervising that school to another elementary school principal, without negotiating over changes in the administrator's workload. We held the Board could eliminate the position but was required to negotiate about the changes in the work hours and workload of the administrator who became principal to two schools. The Appellate Division agreed.

We conclude that Section E1 is not mandatorily negotiable because it divests the District of its prerogative not to fill vacancies.

Section E2 is not mandatorily negotiable as written because it addresses the working conditions of employees, i.e. teachers, who are not included in the CASA negotiations unit. Whether teachers can be involuntarily assigned to fill in for absent vice-principals is a matter of concern to the District and the representative of the teachers. CASA asserts that this section is primarily a work preservation clause. Since the assignment of a teacher to fill in for a member of CASA's unit would be for no more than three days, any erosion of unit work would be temporary and minimal.

Section E3 is not mandatorily negotiable. Although it does not allow a principal to unilaterally designate someone to fill in as a vice-principal when the holder of the position is absent for more than three days, it mandates that a member of the management team take an action aimed at finding a replacement for an absent vice-principal. Its focus is more on management policy than on employee workload and therefore the provision is not a required subject of collective negotiations.

Section K of Article XIV provides:

Whenever any other regularly assigned member of the school staff (instructional or non-instructional) is absent from the building, the principal shall have the right to call a substitute to insure the smooth and effective running of the building within the guidelines of existing Board policies and procedures.

The District asserts that Section K divests it of its discretion to temporarily staff vacancies with substitutes. It asserts that contractual provisions dealing with the hiring of substitutes are not mandatorily negotiable.

CASA contends that Section K does not divest the District of its managerial prerogative over staffing temporary vacancies. It asserts that provisions concerning procedures for filling vacancies that do not compel the District to make assignments are mandatorily negotiable.

This provision would appear to require the District to fill vacancies and is not mandatorily negotiable.

Article XV is entitled Vice Principals - Status and Terms of Employment. Section B provides:

1. In case of the absence of the principal, the vice principal may select a teacher of his/her staff to provide assistance for that day. The vice principal is authorized to replace such teacher for that day with a pool substitute or a per diem substitute.
2. In the case of the temporary absence of the principal for ten (10) school days (or less if deemed advisable by the executive superintendent), the vice principal shall be designated as acting principal. In schools where there are two (2) or more vice principals, the senior vice principal in terms of length of service as a vice principal, shall be offered the first opportunity to serve as acting principal.

Implementation of compensation for this service shall be in accordance with Article XXVI entitled Promotional Salary Determination and Adjustment as written in this Board/CASA agreement and retroactive to the commencement of the principal's absence.

3. In such a case as described above, in schools with only one vice principal, a member of the instructional staff in the school may be selected to provide the vice principal with assistance; and such staff member shall be replaced by a pool or per diem substitute.

4. In selecting such a staff member, the vice principal shall consult with the principal, if possible, or the appropriate assistant executive superintendent. In case of any disagreement with respect to such choice, the decision of the assistant executive superintendent shall prevail.

5. Any teacher so selected shall accept the assignment voluntarily and shall perform no special administrative or supervisors functions or assume any administrative or supervisory authority but shall perform only such functions as may ordinarily be assigned to a teacher or be performed by a teacher voluntarily.

The District states that Section B1 of this provision mirrors Section E1 in Article XIV and is not mandatorily negotiable for the same reasons. CASA also relies on the arguments it offers in support of the negotiability of Article XIV, Section E1.

The District asserts that Section B2 is not mandatorily negotiable because it limits the replacement of the principal to a vice-principal or even a specific vice-principal. It contends that the District has the authority to determine who is the best candidate for an assignment. It asserts that the second sentence of Section 2 is not mandatorily negotiable because it bases eligibility for appointment on seniority. It contends that this interferes with its ability to assign a candidate with the best skills for a particular position. The District contends that the

compensation portion should be renegotiated after taking into consideration the District's prerogative to make staffing and assignment decisions.

CASA contends that Section B2 addresses the impact of the District's decision not to fill a vacancy on other vice-principals who might be called on to perform additional duties in the principal's absence. It asserts that the District still maintains the authority to temporarily fill a principal's vacancy at any time, in an emergency or otherwise. CASA also maintains that the second paragraph is mandatorily negotiable because pay for extra duties is a mandatorily negotiable subject.

The District disputes CASA's contention that Section B2 involves the impact of staffing decisions. It asserts that this section significantly interferes with the District's managerial prerogative to make staffing decisions.

The District asserts that Section B3 impermissibly limits its discretion to fill vacancies and to determine whether to hire substitutes. It contends that language requiring replacement by a substitute is also non-negotiable because it takes away the District's right to determine coverage for absent teachers.

The District asserts that Section B4 dictates how vacancies will be filled and divests the District of its right to determine who is best qualified for the position.

CASA asserts that Sections B3 and B4 must be read in tandem. It contends that as with Section E3 of Article XIV, these

sections do not impede management's prerogative to make temporary staff assignments. It contends that the provision merely provides that the vice-principal have an opportunity to consult with the superintendent to discuss the selection of a candidate for a temporary assignment and the provision makes clear that the superintendent has the final say in the matter.

The District asserts that Section B5 is not mandatorily negotiable because it makes the assignment of a teacher voluntary and limits the duties which the teacher can perform as an acting vice-principal.

CASA maintains that Section B5 is mandatorily negotiable because it aims to ensure that non-unit personnel are not temporarily assigned to perform duties traditionally performed by unit members.

The District disputes CASA's assertion that Section B5 protects unit work, but makes accommodations for short-term staffing needs and emergencies.

Sections B1 and B3 parallel Article XIV, Section E1 and are not mandatorily negotiable for the reasons stated in our discussion of that language.

We find the first paragraph of Section B2 to be not mandatorily negotiable. The District has a right to determine whether to elevate a vice-principal to acting principal based on its assessment of that employee's qualifications. The second paragraph of Section B2 addresses compensation to be paid to an

employee working in a higher pay category and is mandatorily negotiable. See, e.g., Town of West New York, P.E.R.C. No. 92-38, 17 NJPER 476 (¶22231 1991), aff'd NJPER Supp.2d 321 (¶243 App. Div. 1993) (compensation for deputy chiefs who allegedly served as acting chief when the fire chief was on vacation for five days was mandatorily negotiable.)

Section B4 addresses the method for selecting the staff member under Section B3 and is not mandatorily negotiable. It presumes a vacancy will be filled and interferes with the prerogative not to fill a vacancy. And, Section B5 is substantially similar to Section E2 of Article XIV, and is, accordingly, not mandatorily negotiable.

Article XVI, Directors, Section J is entitled Absence of Supervisor. It provides:

In case of the temporary absence of a supervisor for more than one (1) calendar month (or less if deemed advisable by the appropriate assistant executive superintendent) a teacher in the district possessing supervisory certification, with appropriate teaching certification in the area of specialization, may be recommended by the department director to serve on an acting basis upon the approval of the appropriate assistant executive superintendent.

The District contends that this provision takes away its managerial prerogative to make assignments and determine the qualifications for the Director position. It asserts that by setting the criteria of supervisory certification and subject area certification, the provision limits the pool of eligibility for

the position. It asserts that such contractual limitations on staffing are impermissible. It also asserts that it is not mandatorily negotiable because it sets the manner and time period in which vacancies are to be filled. The District contends that the provision also impermissibly limits the District to select candidates from within the District and also impermissibly controls the assignments of teachers who are outside the negotiations unit.

CASA states that this provision simply ensures that in situations where a supervisor's position has not been filled by the District after a month, the department chair has a means to open dialogue with the District concerning the staff shortage created by the vacancy. CASA asserts that this provision does not mandate the time for filling vacancies, set the criteria for eligible candidates, or preclude the District from selecting candidates from within or outside the District. CASA maintains that the District is free to fill the vacancy both before and after the one-month period in its sole discretion without impediments.

The District disputes CASA's contentions and replies that Section J divests it of its managerial prerogative to assign staff and determine qualifications for positions. The district also asserts that the provision impermissibly dictates a time period in which vacancies must be filled.

This section is mandatorily negotiable. It provides a procedural opportunity for a supervisor to recommend that a vacancy be filled by a qualified employee. It provides for a recommendation only and therefore does not require that the District fill a vacancy with a particular person or at all. It therefore does not significantly interfere with any educational policy determinations.

Article XVI, Assistant Director, Section I is entitled Absence of Director. It provides:

In case of the temporary absence of the director of a department for more than one calendar month, or less if deemed advisable by the executive superintendent or assistant executive superintendent, the assistant director shall be designated acting director and a supervisor may be designated as the acting assistant director. In the event the director is absent and the assistant director is absent, the supervisor shall be designated acting director.

Implementation of compensation for this service shall be in accordance with Article XXVI, entitled Promotional Salary Determination and Adjustment as written in the District/CASA agreement and retroactive to the commencement of the director's or assistant director's absence.

The District maintains that this language follows the language of Article XVI, Section J. It asserts that this section impermissibly takes away the District's right to select the candidate best suited to the position and limits the candidate pool. The District contends that the second paragraph concerning compensation should be renegotiated taking into consideration the District's prerogative to make staffing and assignment decisions.

CASA argues that Section I does not usurp the District's authority, but seeks to address the impact on other employees of the District's decision not to fill a vacancy.

The District disputes CASA's assertion that this provision deals with the impact on other employees. It asserts that the provision usurps the District's prerogative to make staffing determinations by providing that the assistant director shall be designated as acting director.

We find the first paragraph of Section I, providing that the Assistant Director will fill in for the Director, to be not mandatorily negotiable for the same reasons discussed in connection with Article XV, Section B2 pertaining to a vice-principal filling in for an absent principal.

The second paragraph of Section I pertains to compensation for working in a higher pay category and is mandatorily negotiable.

Article XVI, Supervisor, Section A is entitled Temporary Absence of Supervisor. It provides:

In case of the temporary absence of a supervisor for more than one (1) calendar month (or less if deemed advisable by the appropriate assistant executive superintendent) a teacher in the district possessing supervisory certification, with appropriate teaching certification in the area of specialization, may be recommended by the department director to serve on an acting basis upon the approval of the appropriate assistant executive superintendent.

The District maintains that this provision sets forth criteria for both supervisory certification and subject area certification to establish eligibility for the position. It contends that this takes away its managerial prerogative to assign staff and determine qualifications. The District also claims that the language limits its search to in-district candidates.

CASA relies on its same arguments as in Article XVI, Section J.

This provision is indistinguishable on its face from Article XVI, Directors, Section J and is also mandatorily negotiable.

Article XVI, Supervisor, Section F is entitled Absence of Director. It provides:

In case of the temporary absence of the director of the department or a principal of a special school without a vice principal for more than one (1) calendar month (or less if deemed advisable by the executive superintendent), the supervisor shall be designated as acting director or acting principal as the case warrants.

Implementation of compensation for this service shall be in accordance with Article XXVI entitled Promotional Salary Determination and Adjustment as written in this District/CASA agreement and retroactive to the commencement of the Director's or principal's absence.

Section G of this Article is entitled Acting Replacement. It provides:

In the event a supervisor assumes the position of acting director, a teacher in the district, possessing appropriate certification in the supervisor's area of specialization, will be

recommended by the acting director to serve on an acting basis upon approval by the appropriate assistant executive superintendent.

Article XVII, Department Chairpersons and Head Guidance Counselors, Section G is entitled Absence of Department Chairperson. It provides:

In the case of the absence of a department chair person for more than one (1) calendar month (or less if deemed advisable by the executive superintendent of the assistant executive superintendent in charge of Secondary Programs) a teacher from that chairperson's department who has supervisory certification shall be designated by the principal to serve on an acting basis with the approval of the executive superintendent or the assistant executive superintendent in charge of secondary programs. Should there be no teacher in that department with supervisory certification then the principal shall select a teacher from his school who possesses supervisory certification. The principal shall also secure the services of a substitute to replace the teacher designated as acting department chairperson.

Section H of this Article is entitled Absence of Vice-Principal.

It provides:

In the case of the temporary absence of the vice principal for ten (10) school days (or less if deemed advisable by the executive superintendent), the department chairperson in the school shall be designated as acting vice principal. In schools where there are two (2) or more department chairpersons, the senior department chairperson, in terms of length of service as a department chairperson, shall be offered the first opportunity to serve as acting vice principal.

The District asserts these provisions are not mandatorily negotiable for the same reasons it provides pertaining to Article XVI, Assistant Director, Section I. The District asserts that

language setting criteria for the temporary filling of vacancies limits its pool of candidates and erodes its managerial prerogative to determine qualifications and assign staff.

CASA asserts that these clauses address procedures for filling a vacancy and do not impede the District's prerogative to determine who should fill the vacancy.

Article XVI, Supervisor, Section G and Article XVII, Department Chairperson and Head Guidance Counselor, Section G are not procedural or mandatorily negotiable. They automatically require that a recommendation be made to fill a vacancy or that a vacancy be filled. Their language is more restrictive than other provisions that permit consultation over vacancies or recommendations that vacancies be filled.

Article XVI, Supervisor, Section F and Article XVII, Department Chairperson and Head Guidance Counselor, Section H, do not condition the filling of the positions on management's approval. As written, they are not mandatorily negotiable, except for the second paragraph of Article XVI, Supervisor, Section F. That clause concerns compensation and is mandatorily negotiable.

Article XVII, Department Chairpersons and Head Guidance Counselors, Section C is entitled Assignment-Head Guidance Counselor. It provides:

In accordance with current practice, the District shall continue to assign a head guidance counselor to each secondary school.

The District asserts that the Commission and the Appellate Division have held that a board of education has a managerial prerogative to create positions that the board deems necessary. It asserts that this provision divests the District of its prerogative on staffing decisions and precludes it from exercising its right to abolish a position.

CASA states that this provision is mandatorily negotiable because it is aimed at preserving unit work. It asserts that the District has a long-standing practice of assigning a head guidance counselor to each school. It contends that without that position, the unique duties of that position would be assumed by non-unit personnel.

Article XVII, Department Chairperson and Head Guidance Counselor, Section C is not mandatorily negotiable to the extent it requires the maintenance and/or establishment of a specific supervisory position, thus affecting the Board's prerogative to determine staffing levels.

Article XVII, Department Chairperson-Athletics, Section A is entitled Assignment. It provides:

Each high school shall have assigned to its staff a department chairperson-athletics. This position shall be separate and apart from the position of department chairperson-physical education.

Article XVII, Department Chairperson-Athletics, Section C is entitled Appointment of Replacement. It provides:

Should a person currently employed by the Board be selected to serve as department

Chairperson-athletics, the District will appoint a replacement in that person's position.

The District asserts that these provisions require the creation and maintenance of administrative/supervisory positions and are not mandatorily negotiable. CASA asserts that these provisions address the increased workload of the department chairperson-physical education and are mandatorily negotiable.

These sections are not mandatorily negotiable as each section requires the maintenance and/or establishment of a specific supervisory position, thus affecting the Board's prerogative to determine staffing levels. See Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17 (1973) (decision to consolidate department chairmanships not mandatorily negotiable).

Article IX is entitled Period of Service. Section B provides:

The administrator in charge of scheduling shall have clerical services in the summer as follows:

One half (1/2) day clerical service for the first twenty (20) days of service rendered by the administrator and one (1) full day of clerical service for each day beyond twenty (20) days for which service is rendered by the administrator.

The District asserts that this provision sets minimum staffing levels for summer clerical services and sets assignments for employees not in the CASA unit and is not mandatorily negotiable. CASA contends that this provision is negotiable because it provides for a solution to the increased workload of the scheduling administrator during the summer months.

Clauses that require the hiring of auxiliary personnel are not mandatorily negotiable. See, e.g., North Bergen Bd. of Ed., P.E.R.C. No. 82-109, 8 NJPER 317 (¶13143 1982). However, provisions which seek to secure clerical help for professionals are mandatorily negotiable where they do not apply to minor clerical duties incidental to the educator's normal functions and where assignments are subject to budgetary constraints. See Burlington Cty. College, 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). This clause is not mandatorily negotiable because it could require the District to hire additional clerical employees to meet the provision's staffing requirements.

ORDER

The following provisions or proposals are mandatorily negotiable:

Article XV, Sections B2 (second paragraph)

Article XVI, Directors, Section J


Article XVI, Assistant Director, Section I (second paragraph)

Article XVI, Supervisor, Sections A and F (second paragraph)

B. The following provisions or proposals are not mandatorily negotiable:

Article IX, Section B
Article XIV, Sections E1, E2, E3 and K;
Article XV, Sections B1, B2 (first paragraph), B3, B4 and B5
Article XVI, Assistant Director, Section I (first paragraph)
Article XVI, Supervisor, Sections F (first paragraph) and G
Article XVII, Department Chairpersons and Head Guidance Counselor, Sections C, G and H
Article XVII, Department Chairperson-Athletics, Sections A and C.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: July 20, 2000
Trenton, New Jersey
ISSUED: July 21, 2000