

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EDISON TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-82-109

EDISON TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission issues a scope of negotiations determination concerning certain proposals of the Edison Township Education Association for inclusion in a successor collective negotiations agreement with the Edison Township Board of Education. The Commission holds negotiable proposals concerning discipline (provided any negotiated clause exempts from binding arbitration any disciplinary determinations involving teachers with statutory protection under the tenure law or with any alternate statutory appeal procedure), fair dismissal procedures culminating in non-binding recommendations, teacher evaluation procedures allowing an Association witness/observer at teacher evaluation conferences which may result in discipline, and procedures concerning teacher performance reports.

The Commission holds non-negotiable proposals requiring the hiring of substitutes, restricting the Board's ability to make transfers, setting criteria for the filling of teaching positions for adult and summer schools, governing the development, substance, and format requirements of teachers' lesson plans, limiting the Board's right to determine matters of student discipline, and setting policy on personal and academic freedom and philosophy for teaching controversial subjects.

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Appearances:

For the Petitioner, Cassetta, Brandon Associates  
(Raymond A. Cassetta, Consultant)

For the Respondent, Klausner & Hunter, Esqs.  
(Stephen B. Hunter, of Counsel)

DECISION AND ORDER

On May 5, 1982, the Edison Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. It seeks a determination as to whether certain provisions from an existing contract were mandatory subjects of collective negotiations between the Board and the Edison Township Education Association ("Association"). The Association wishes to include these provisions in a successor contract. A copy of the provisions is appended as Exhibit "A."<sup>1/</sup>

Article IV, entitled Teacher Rights, provides, in part:

<sup>1/</sup> Both parties have filed briefs. The Board requested the opportunity to file a reply brief. The request was granted, but it did not file its reply.

B. No teacher shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage or be denied renewal of contract without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure within set forth. All disputes regarding the dismissal or non-renewal of the contract of a non-tenured teacher shall be subject only to the Fair Dismissal Procedure set forth in Article III, Paragraph C.

The parties' grievance procedure in the predecessor contract culminated in binding arbitration.

In In re New Providence Board of Education, P.E.R.C. No. 83-88, 9 NJPER (¶        1982), we considered the negotiability of an almost identical proposal in light of the recent amendment to N.J.S.A. 34:13A-5.3. <sup>2/</sup> We will

<sup>2/</sup> N.J.S.A. 34:13A-5.3 provides, in part:

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

\* \* \*

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. (Emphasis supplied)

not repeat that discussion here. We hold that given the amendment, Article IV is now negotiable, provided that any negotiated clause exempts from binding arbitration any dispute involving the discipline of teachers with statutory protection under the tenure law or with any alternate statutory appeal procedure.<sup>3/</sup>

Article IV exempts disputes regarding the dismissal or non-renewal of the contract of a non-tenured teacher from the negotiated grievance procedure and substitutes the Fair Dismissal Procedure set forth in Article III, Section 7. That Article would create a Fair Dismissal Committee, composed of three Board members and three teachers, which would review dismissals. While the predecessor contract provision provided that the decision of the Committee would be binding and that the votes of a majority of the members would be necessary to overrule the superintendent, the Association now concedes that these aspects of Article VIII are non-negotiable and that the procedures may legally only result in a non-binding recommendation which the Board will remain free to review and overrule. See, Bethlehem Twp. Ed. Ass'n v. Bethlehem Twp. Bd. of Ed., P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), aff'd 177 N.J. Super. 479 (App. Div. 1981), aff'd 91 N.J. 38 (1982).

<sup>3/</sup> Employees with statutory protection, however, may still have recourse to supplementary, non-binding grievance procedures. New Providence, supra at pp. 7-8, n. 4. Whether or not any particular employee has statutory protection under the tenure laws or any alternate statutory appeal procedure, thus disqualifying him from binding arbitration, need not be decided now. Should a dispute arise as to whether a particular employee has available a particular statutory right or appeal procedure, we can decide the arbitrability of that dispute in a more specific context.

Given the Association's concessions and the consequent removal of Article III, subsections 7(C)(1) and (5) from its proposals, we believe that the fair dismissal procedures are mandatorily negotiable. These procedures directly and intimately affect the work and welfare of employees by allowing them the opportunity to contest a dismissal as vigorously as possible without significantly interfering with the Board's right to make the dismissal at the end of the process. See, Bd. of Ed. of the Township of Bernards v. Bernards Twp. Ed. Ass'n, 79 N.J. 311 (1979); In re Commercial Twp. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶111111 1980). We reject the Board's contention that N.J.A.C. 6:3-1.20 preempts non-binding fair dismissal procedures.<sup>4/</sup> The proposed procedures supplement, and do not displace, the rights which N.J.A.C. 6:3-1.20 extends. New Providence, supra at pp. 7-8, n. 4.

<sup>4/</sup> N.J.A.C. 6:3-1.20 provides:

(a) Whenever a nontenured teaching staff member has requested in writing and has received a written statement of reasons for nonreemployment pursuant to N.J.S.A. 18A:27-3.3, he/she may request in writing an informal appearance before the local board of education. Such written request must be submitted to the board within ten calendar days of receipt of the board's statement of reasons.

(b) Such an informal appearance shall be scheduled within 30 calendar days from receipt of the board's statement of reasons.

(c) Under the circumstances described herein, a nontenured teaching staff member's appearance before the board shall not be an adversary proceeding. The purpose of such an appearance shall be to permit the staff members to convince the board to offer reemployment.

(d) Each local board shall exercise discretion in determining a reasonable length of time of the proceeding, depending upon the specific circumstances in each instance.

(e) Each local board shall provide adequate written notice to the employees regarding the date and time of the informal appearance.

(continued)

Article VII, labelled "Teaching Hours and Teaching Load," has numerous subsections, only one sentence of which is in dispute. The last sentence of subsection (B)(3) states "[i]n the absence of the special subject teacher, a substitute will be hired." The Board argues that the employment of substitute teachers is a management prerogative not intimately related to workload. The Association contends that the true purpose of the disputed sentence, when read in light of subsection B as a whole, is to "preserve in non-emergency circumstances the right of a teacher to a contractually negotiated preparation period." (Brief at p. 20) (Emphasis in original).

The Commission has determined that a board of education's decision to hire or not hire substitute teachers is a managerial prerogative. In re Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979); cf. In re Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). The last sentence of Article III(B)(3) infringes upon the Board's prerogative in the hiring of substitutes. The sentence is non-negotiable.

4/ (Continued)

(f) The nontenured teaching staff members may be represented by counsel or one individual of his/her own choosing.

(g) The staff member may present witnesses on his/her behalf. Such witnesses need not present testimony under oath and shall not be cross-examined by the board. Witnesses shall be called into the meeting to address the board one at a time and shall be excused from the meeting after making their statement.

(h) The proceeding of an informal appearance before the local board as described herein may be conducted pursuant to N.J.S.A. 10:4-12(b)(8).

(i) Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of its final determination. Such notification may be delegated by the board to its superintendent or board secretary.

We emphasize, however, that contractual clauses providing for a certain number of preparation periods are mandatorily negotiable and that any breach of these provisions will be arbitrable. See, e.g, In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977).

Article XIII, Section C deals with transfers and re-assignments and requires that transfers, both voluntary and involuntary, "only be made after the best interests of the teacher and the school system are taken into consideration." The Association argues that this language is "innocuous" and "non-binding," but does not concede that any disputes arising under this language would not be submitted to binding arbitration. If such disputes were submitted to binding arbitration, the arbitrator would be asked to determine whether the Board had considered the best interests of the teacher and the school system as the arbitrator saw their interests. This contractual limitation on the Board's right to decide unilaterally when transfers are necessary is impermissible. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978) (proposal that wishes of individual for voluntary transfers shall be honored to the extent transfer does not conflict with instructional requirements and best interests of school system is non-negotiable).

Article XV, Section B requires that the Board, in filling positions in the Adult and Summer School, give considera-

tion "to a teacher's area of competence, major and/or minor fields of study, attendance record and length of service in the district. When all other factors are substantially equal, preference shall be given to teachers in the school district."

This proposal is also similar to one in Jersey City, supra, which established criteria to be considered by a school board in filling vacancies, including preferential treatment of those already employed by the board. The Commission, citing Byram, supra at 27, found that the determination of criteria to be used in filling vacancies "is a matter of major educational policy on which the [b]oard may not be compelled to negotiate. In addition, the Commission, relying upon North Bergen Twp. Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1977), found the preferential hiring treatment proposal to be non-negotiable. Accordingly, we find Article XV, Section B to be non-negotiable.

Article XVI is entitled Teacher Evaluations. The last sentence of Section B of this Article states: "[i]f a representative is present at a [teacher evaluation follow-up] conference, it is in the role of witness/observer. He/she is expected to reserve any remarks, comments and/or suggestions until a time provided at the end of the conference." The Board contends that N.J.A.C. 6:3-1.19 and 1.21, which require observation conferences



between supervisors and teaching staff members preclude a representative's attendance at the conference. In addition, the Board cites In re North Warren Reg. Bd. of Ed., H.E. No. 79-3, 4 NJPER 279 (¶4142 1978), aff'd P.E.R.C. No. 79-9, 4 NJPER 417 (¶4187 1978), in which a Commission Hearing Examiner found that so long as evaluation procedures are not used to infringe upon protected rights, there is no statutory right of representation at evaluation meetings. Id. at 283. The Association argues that this contract provision is only meant to come into play

"...in those rare circumstances when it could be anticipated that the conference was more in the nature of an investigatory interview or meeting, which the employee could reasonably believe could result in disciplinary action. For example, the language at issue covers a circumstance wherein a chemistry teacher would receive an oral reprimand after a classroom observation concerning non-compliance with safety procedures during the course of a laboratory experiment. A teacher may well anticipate that a follow-up conference would be disciplinary in tone and warrant the participation of a local representation under the guidelines expressed in decisions such as [In re East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in part, rev'd in part, App. Div. Docket No. A-280-79 (decided 6/18/80) and NLRB v. Weingarten, 420 U.S. 251 (1979)]. (Brief, p. 28)

We do not agree with the Board that N.J.A.C. 6:3-1.19 and 1.21 specifically preclude the attendance of a witness/observer at all follow-up conferences, regardless of the circumstances. The right to employee representation during conferences which an employee reasonably believes may result in disciplinary action is well-established. In re Twp. of East Brunswick, P.E.R.C. No. 83-16, n. 2, 8 NJPER 479 (¶13244 1982).<sup>5/</sup> We hold that in

<sup>5/</sup> We note that the NLRB has held that an employee is not entitled under the federal Labor-Management Relations Act to representation during an interview called for the sole purpose of informing him of a disciplinary decision already made, rather than for the purpose of investigating a matter which may lead to discipline. Baton Rouge Water Works Co., 246 NLRB No. 161 (1980).

those limited instances, where an employee reasonably fears discipline, the Association's proposal for the attendance of a witness/observer at such conferences is mandatorily negotiable.<sup>6/</sup>

Article XVI, Section C is a multiple part provision dealing with written teacher performance reports. The Board argues that the evaluation provisions in Article XVI can be found in specific regulations and, pursuant to Bethlehem, supra, are non-negotiable. The Association concedes that the evaluation provisions paraphrase the regulations cited by the Board, but argues that the existence of the regulations does not make the provisions non-negotiable.

Statutes and regulations which specifically set a term and condition of employment are incorporated by reference into the collective negotiations agreement. State Supervisory, supra at p. 80; Township of West Windsor v. PERC, 78 N.J. 98, 116-117 (1978). Any proposal which merely provides the same right and makes it subject to the negotiated grievance procedure is mandatorily negotiable. Cf. In re County of Hudson, P.E.R.C. No. 83-59, NJPER \_\_\_ (¶ \_\_\_ 1982). It is clear that procedural aspects of teacher evaluations which do not contravene any specific statute or regulations are mandatorily negotiable terms and conditions of employment. See, e.g., Bethlehem, supra. Accordingly, the provisions listed in Article XVI, Section C, are mandatorily negotiable.

<sup>6/</sup> Given the Association's position concerning the confined reach of the proposals, we need not consider whether a proposal for the attendance of a witness/observer at a follow-up conference would be mandatorily negotiable under any other circumstances.

Article XVII, Section B deals with teachers' lesson plans. We have long held that the development, substance and format requirements of lesson plans concern educational policy decisions and are not negotiable. See, In re Woodbridge Twp. Bd. of Ed., P.E.R.C. No. 81-120, 7 NJPER 238 (¶12106 1981); In re Fairview Bd. of Ed., P.E.R.C. No. 81-19, 6 NJPER 395 (¶11204 1980); In re Northern Burlington Cty Reg. Bd. of Ed., P.E.R.C. No. 80-151, 6 NJPER 315 (¶11154 1980); In re West Amwell Twp. Bd. of Ed., P.E.R.C. No. 78-31, 4 NJPER 23 (¶4012 1977). Accordingly, we find that Article XVII, Section B is, in its entirety, non-negotiable.

Sections B through I of Article XXII, entitled Student Control and Discipline, address various aspects of student discipline. Student discipline is an area intimately related to educational policy which is an inherent managerial prerogative. In addition, the Board has the prerogative to establish procedures to be used in the area of student discipline. See, Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978); In re Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); In re Point Pleasant Bd. of Ed., P.E.R.C. No. 79-33, 5 NJPER 200 (¶10115 1979). Accordingly, we find Article XXII, Section B through I non-negotiable.<sup>7/</sup>

<sup>7/</sup> We have held, however, that the establishment of non-binding advisory forums for the expression of faculty opinions regarding student disciplinary procedures is negotiable. In re Matawan Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980). The instant Article does not provide such forums.

Article XXV, Section C, labelled Personal and Academic Freedom, and the provision labeled Philosophy For The Teaching Of Controversial Subjects clearly relate to matters of major educational policy and are non-negotiable. Ridgefield Park, supra.

ORDER

The following proposals are mandatorily negotiable:

(1) Article IV, Section B provided it also state that teachers with statutory protection under the tenure laws or with alternate statutory appeal procedures may not submit disputes concerning disciplinary determinations affecting them to binding arbitration;

(2) Article III, Section 7 provided that subsections (C)(1) and (5) are deleted;

(3) Article XVI, Section B, provided that it also state, consistent with the Association's position, that a representative may only attend those conferences which the teacher reasonably believes may result in discipline; and

(4) Article XVI, Section C.

The following proposals are not mandatorily negotiable:

(1) The last sentence of Article VII, Section (B)(3).

(2) Article XIII, Section C.

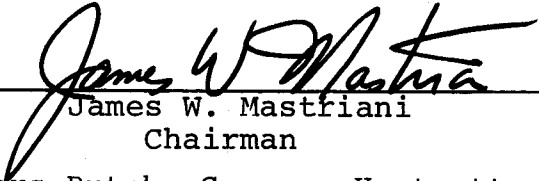
(3) Article XV, Section B.

(4) Article XVII, Section B.

(5) Article XXII, Sections B through I.

(6) Article XXV, Section C.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hartnett and Suskin voted in favor of this decision. None opposed. Commissioner Newbaker abstained. Commissioner Graves dissents from the Order to the extent that it finds certain provisions non-negotiable. Commissioner Hipp was not present.

DATED: Trenton, New Jersey  
January 19, 1983  
ISSUED: January 20, 1983

APPENDIX A

ARTICLE III

GRIEVANCE PROCEDURE

FAIR DISMISSAL PROCEDURES

**7. Fair Dismissal Procedure \*\***

**a. Fair Dismissal Committee**

(1) Membership - The Board and the Association agree to establish a Fair Dismissal Committee consisting of six (6) members, three (3)

~~Board members appointed by the Board and three (3) teachers appointed by the President of the ETEA.~~

(2) Responsibility - The Fair Dismissal Committee shall hold hearings pursuant to Section b

**b. Procedures**

(1) Initial Appeal - A dispute involving the interpretation of Article IV, Section A as it applies to the dismissal or non-renewal of the contract of a non-tenure teacher shall be processed initially under Article III, Paragraph C, Grievance Procedure, Section 5, Level II waiving the preceding steps of the grievance procedure. A grievance to be covered under this procedure must be initiated in writing fifteen (15) calendar days from the date of the letter notifying the teacher of his/her dismissal or non-renewal of his/her contract.

(2) Continued Appeal - Should the grievance remain unresolved, the grievance may be pursued at the option of the teacher and/or the P.R. & R. Committee under the following procedure: Level III of the grievance procedure shall be waived. The Superintendent shall not refer the grievance to the Board of Education. The Superintendent and/or other parties of interest shall not refer nor discuss the decision to not renew the contract of a non-tenure teacher or any matter pertaining thereto until or unless this Fair Dismissal procedure is invoked.

(a) The teacher and/or the P.R. & R. Committee may refer the grievance to the

Fair Dismissal Committee within ten (10) calendar days after receipt of a written decision of the Superintendent. Said referral shall be a written notice submitted to the Board of Education and the Association President requesting that the Fair Dismissal Committee convene its hearings.

(b) Within ten (10) calendar days after receipt of the request for the Fair Dismissal Committee to convene, the Board of Education and the Association President shall appoint their members to the Committee.

\*\*The parties' predecessor agreement contained a statement that this Article would be held in abeyance pending the outcome of the Bethlehem Township appeal.

- (c) Within ten (10) calendar days after appointment, the Fair Dismissal Committee shall hold hearings and render its decision in writing without delay, but in no event later than twenty (20) calendar days from the date the hearings close or twenty (20) calendar days after briefs on the issues have been submitted to the Committee, provided, however, that an extension of this time limitation may be mutually agreed upon by the parties.
- c. Decisions of the Committee
- (1) The decision of a majority of the members of the Committee shall be necessary to overrule the decision of the Superintendent.
  - (2) All motions and objections made by either party shall be sustained only by a majority of the members of the Committee.
  - (3) The Fair Dismissal Committee's final decision shall be limited to the specific issue presented to it concerning the dismissal or non-renewal of contract of a non-tenure teacher.
  - (4) The Committee's final decision shall either uphold the non-renewal of contract or dismissal of a non-tenure teacher with or without compensation if applicable.
  - (5) Any resolution of the grievance by and between the Association and the Board prior to the decision of the Committee shall be binding upon all parties.
  - (6) All meetings and hearings shall be conducted in private and shall include only such parties in interest as may be appropriate for a fair hearing. Unless otherwise mutually agreed to, all hearings under this procedure shall be held at some appropriate conference room in Edison Township at Board expense.
  - (7) The final decision of the Committee shall not disclose the individual votes of the Committee members, and all Committee members shall be prohibited from making any individual voting results public.
  - (8) All parties to this proceeding shall be granted the requirements of procedural due process.
  - (9) The teacher and the Board may each select a spokesperson, but neither party may be represented by legal counsel.

ARTICLE IVTEACHER RIGHTS

IV. B. No teacher shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage or be denied renewal of contract without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure within set forth. All disputes regarding the dismissal or non-renewal of the contract of a non-tenured teacher shall be subject only to the Fair Dismissal Procedure set forth in Article III, Paragraph C.

ARTICLE VIITEACHING HOURS AND TEACHING LOAD

- VII. B.
2. Teachers may leave the building during their scheduled duty free period or lunch period if no conference or previous commitment has been made. However, teachers must notify the office that they will be out of the building.
  3. The Board agrees that a teacher's primary responsibility is to teach. Therefore, the Board will, within reasonable limits, relieve teachers of non-teaching duties which can better be performed by clerical or non-professional personnel. Elementary teachers (grades 1-6) will be provided with one daily thirty (30) minute preparation period. Kindergarten teachers will be provided with two (2) fifteen (15) minute preparation periods per day. In the absence of the special subject teacher, a substitute will be hired.

ARTICLE XIIITRANSFERS AND REASSIGNMENTS

- XIII. C. Determination of transfers, both voluntary and involuntary, will only be made after the best interests of the teacher and the school system are taken into consideration.



ARTICLE XV

ADULT AND SUMMER SCHOOL ETC.

XV.

**B. Filling of positions**

In filling such positions, consideration shall be given to a teacher's area of competence, major and or minor fields of study, attendance record and length of service in the district. When all other factors are substantially equal, preference shall be given to teachers in the school district.

ARTICLE XVI

TEACHER EVALUATION

XVI.

**B. Observation Reports**

**1. Observation by supervisory personnel (principals, supervisors, department heads, etc.) shall include a follow-up conference with the teacher. The written report shall be given to the teacher within a reasonable time prior to the conference. In scheduling conferences, the evaluator shall take into account teacher preference. Such conferences may be held during teacher preparation periods. If a representative is present at a conference, it is in the role of witness/observer. He/she is expected to reserve any remarks, comments, and/or suggestions until a time provided at the end of the conference.**

The report shall not be placed in the teacher's file or otherwise acted upon without prior consultation with the teacher. Such reports shall include: (a) strengths and weaknesses of the teacher's performance as evidenced during the specific observation; and (b) specific suggestions as to measures which might be taken by the teacher to improve his/her performance in areas where weaknesses have been observed.

**XVI.****C. Written Performance Reports**

Written performance reports shall be prepared by the evaluator and submitted to the Superintendent three times a year (November 15, February 1, and April 1) for non-tenure teachers and once a year for tenure teachers. These reports shall be prepared in triplicate with the original forwarded to the Superintendent, one (1) copy retained by the principal, and one (1)

copy sent to the teacher. The report shall not be placed in the teacher's file or otherwise acted upon without prior consultation with the teacher.

1. Written Performance Reports shall be based upon a compilation of classroom observations and other written supervisory reports by all supervisory personnel who come into contact with the teacher in a supervisory capacity. The Written Performance Report shall not contain any material unless it has been brought to the attention of the teacher.
2. Written Performance Reports shall include but not be limited to:
  - a. Performance areas of strength
  - b. Performance areas needing improvement based upon the job description
  - c. An individual professional improvement plan developed by the evaluator and the teaching staff member
  - d. A summary of available indicators of pupil progress and growth, and a statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member
  - e. Provision for performance data which have not been included in the report prepared by the evaluator to be entered into the record by the evaluatee within ten (10) working days after the signing of the report.
3. An annual summary conference, which may require one or more meetings, shall be scheduled by the evaluator for the purpose of reviewing the teacher's written performance report and developing a Professional Improvement Plan. In scheduling conferences, the evaluator shall take into account teacher preference. Such conferences may be held during teacher preparation periods. If a representative is present at a conference, it is in the role of witness/observer. He/she is expected to reserve any remarks, comments, and/or suggestions until a time provided at the end of the conference.
4. The Professional Improvement Plan shall be developed by the evaluator and the teaching staff member. The PIP shall be based on the job description and shall focus on the most important areas of professional growth. The PIP shall provide general guidance for continued professional development and/or focus on clearly identified remedies for areas needing improvement.

Article XVI, Section C (cont'd)

5. The teacher has five (5) working days to sign the Written Performance Report. Such signature indicates receipt of the report only.
6. The teacher has ten (10) working days after signing the Written Performance Report to add additional performance data and/or file an addendum.

ARTICLE XVII

INSTRUCTIONAL DUTIES OF TEACHERS

- XVII. B. Teachers shall make thorough preparation for all daily lessons and they shall maintain written plans reflecting such preparation. Lesson plans shall include or refer to information pertinent to the effective implementation of each lesson. Essentially, written lesson plans shall serve two purposes:
- (1) to assist the teacher in preparing for each daily lesson
  - (2) to indicate that the prescribed curriculum is being implemented.

The format for written lesson plans shall be decided by each teacher as part of his/her professional responsibilities.

Lesson plans shall be reviewed on a regular basis by appropriate administrative and/or supervisory personnel. Should questions arise regarding the appropriateness of an individual teacher's lesson plans, the building principal, in consultation with other supervisory personnel, shall determine the acceptability of the plans. The appropriateness of written lesson plans shall be determined on the basis of teacher performance as it relates to the achievement of the criteria listed above in B-1 and B-2. Teachers are to provide adequate directions for substitutes, the purpose of which should be to continue, if possible, the ongoing program or, if more appropriate, a meaningful educational alternative that relates to the subject(s) area.

ARTICLE XXIISTUDENT CONTROL AND DISCIPLINE

XXII.

- B. An appropriate student disciplinary procedure shall be developed and implemented in each school by the principal with the assistance of his staff.
- C. All teachers shall exercise a general supervision of conduct of all pupils in and out of the school building; they shall report any improper conduct on the part of any pupil to the teacher of said pupil or to the principal of the building or his/her designee.
- D. No pupil shall be allowed to enter or remain in any school room at any time out of school hours, unless a teacher or monitor is present. Permission for a pupil to leave school for any reason during school hours may be granted only by the principal or assigned designee.
- E. Pupils shall not be allowed to assemble in or about the school building at an unreasonable time before the opening of school nor to loiter about after school hours.
- F. When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor or psychologist, physician or other specialist, the teacher shall so inform the principal or immediate superior. The principal or immediate superior shall attempt to resolve the problem as soon as possible, utilizing the above-mentioned personnel as needed. The teacher shall be notified and shall have the right to participate in any scheduled conference and be apprised of the disposition of the case.
- G. No corporal punishment shall be inflicted upon any pupil.
- H. Teachers shall report cases of assault suffered by them in connection with their employment to their principal or immediate superior.
- I. As specified in 18A:6-1, a teacher may, within the scope of employment, use and apply such amount of force as is necessary to quell a disturbance threatening physical injury to others or destruction of property, to obtain possession of weapons or other dangerous objects within the control of the pupil(s) and to defend his or her person.

ARTICLE XXV

PERSONAL AND ACADEMIC FREEDOM

XXV.

- C. The Board and the Association agree that academic freedom is essential to the fulfillment of the purpose of the Edison Township School District and know there is a fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:
1. The pupils and faculty of the Public Schools of Edison Township shall exercise the right to study and discuss controversial issues:
    - a. with political, economic or social significance;
    - b. with access to full and adequate information presenting the various viewpoints on the issues;
    - c. in a scholarly climate free from bias and prejudice;
    - d. with the recognition that all study efforts are directed toward the achievement of responsible independent judgment;
    - e. with opportunities to form and express individual opinions in a rational fashion without discussing individual personalities of teachers, pupils or school authorities.
  2. Consideration of controversial topics, with student participation, and all available resource material, shall be directed by properly qualified and certificated personnel of the school district, with the complete support of the Board of Education.
  3. The study of controversial issues shall take place within the framework of the existing curriculum and as a phase of the study of contemporary problems. When conducting such studies, teachers shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration or the Board.
  4. Individuals and groups may not insist on the right to present points of view directly to the students. Presentation by individuals and groups shall be part of a balanced program that insures the coverage of all sides of a controversial topic. Topics of a one-sided nature may be approved by the building principal.

### **PHILOSOPHY FOR THE TEACHING OF CONTROVERSIAL TOPICS**

1. **Definition:** A controversial topic as understood in this statement is one about which there exist conflicting opinions among the citizens of the community, the nation or among the nations of the world.
2. **Philosophy:** As the world gains greater complexity and becomes more confusing as it organizes and reorganizes, pupils must develop a greater understanding of events and the concepts involved. It becomes desirable for pupils to be more fully aware of the dynamic changes occurring in the world. Survival demands the effective and thorough teaching of the principles of American government at all levels, the organization and development of our democratic institutions, and of our way of life, as a means toward further improvements in our way of life and our governmental institutions. Pupils must inevitably be confronted with controversial issues as they study a diversity of topics; certainly there is a legitimate place for their discussion in the public schools. Practical as well as theoretical approaches must be emphasized. Timeliness, the needs and maturity of the pupils, and the philosophy of the school, within the framework of democracy, are basically the important considerations.

A free society must foster the development of critical and independent thinking. Today's students become tomorrow's citizens. Freedom from fear and ignorance are essential to objective study and effective discussion. Many of the controversial issues of yesterday are accepted practice in our way of life today. Our great nation, itself, was born in controversy.

A thorough knowledge of, and familiarity with, opposing viewpoints will assist in the elimination of hysteria and will afford the opportunity for the development of a genuine interest in the issues confronting the individual, the community, the state and the nation. A successful and functioning democracy requires that its youth have a thorough grounding in and understanding of, as well as an abiding faith in its principles.