

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-80-147

JERSEY CITY EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission rules on the negotiability of certain proposals made for a successor agreement including the continuation of certain existing contractual provisions presented by the Jersey City Education Association for inclusion in the successor agreement. The Commission finds that proposals relating to procedural aspects of teacher assignments, transfers, promotions and the filling of vacancies, in addition to provisions relating to non-binding recommendations on the part of teachers in the area of student discipline are all mandatorily negotiable.

The Commission also finds that proposals relating to non-procedural aspects of teacher assignments, transfers, promotions, and the filling of vacancies, along with provisions concerning with student discipline, textbooks, teaching materials, supplies, emergency utilization of teachers as supervisors of students during teacher preparation periods, class size, employment of teaching specialists, utilization of specialized teaching equipment, employment of substitute teachers, and teacher qualifications are not mandatory subjects of negotiation.

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Appearances:

For the Petitioner, Krieger & Chodash, Esqs.
(Brian N. Flynn, of Counsel and on the Brief)

For the Respondent, Philip Feintuch, Esq.
(Alan S. Porwich, on the Brief)

DECISION AND ORDER

On June 2, 1980, the Jersey City Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain holdover provisions from an existing contract were mandatory subjects of collective negotiations for a successor contract between the Board and the Jersey City Education Association (the "Association"). Both parties have filed briefs dealing with the numerous proposed articles, which will be treated seriatim. A copy of the proposals as submitted with the petition is appended hereto as Exhibit "A".

Article 13 - labeled "Teacher Assignments" - has nine sections, not all of which are in dispute. 13-1 is a statement to the effect that teachers will not be assigned to teach in areas outside the scope of their certification. It is clear that, under the decision in Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978), teacher assignments are managerial prerogatives beyond the scope of negotiations. Using the Ridgefield Park rationale it is equally clear that Article 13-1 infringes upon the Board's "managerial duty to deploy personnel in the manner which it considers most likely to promote the overall goal of providing all students with a thorough and efficient education." Ridgefield Park, supra, 78 N.J. at 156. As such, 13-1 is non-negotiable.^{1/}

Article 13-2 provides that "assignments shall be given to teachers at least three days before the closing of school." While the decision to make assignments, as noted above, is an inherent managerial prerogative, strictly procedural aspects of the decision to assign are mandatorily negotiable. In re Fairview Bd. of Ed., P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979). Article 13-2 which provides teachers with notice of which assignments they will be given is purely procedural and is, therefore, mandatorily negotiable.

^{1/} Since assignments are not mandatorily negotiable, it is unnecessary for us to determine whether teachers, consistent with statutes or regulations governing such matters, may be assigned to courses not within their area of certification.

The first sentence of Article 13-3.2 deals with the Board's right to temporarily assign teachers "when immediate assignment is imperative." While such a clause may appear to be a mere restatement of the Board's inherent rights, cf. In re Byram Twp. Board of Education, 152 N.J. Super. 12, 24-25, (App. Div. 1977), in which the Court determined that boards of education have the right to assign teachers in emergency situations, since the issue is non-negotiable, the Board can insist that it not be contained in the collective agreement.

Article 13-3.3 is concerned with the filling of vacancies. The first sentence of this article requires that the Board fill all vacancies from "an alphabetized list of those who apply within the time specified in the announcement." The second sentence deals with the preferences the Board must give in making its selection. The Appellate Division in North Bergen Twp. Bd. of Ed. v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976), in discussing the selection of candidates to fill vacancies, noted that such selection "involves major educational policy and as such must be considered a managerial prerogative." Id at 103. The Court went on to note that "procedures by which promotional vacancies are filled should be negotiated." Id at 104. However, it should be stressed that the Board has the ultimate authority to decide whether or not to fill any vacancy. State of

N.J. Dept. of Law & Public Safety v. State Troopers NCO Ass'n of New Jersey, 179 N.J. Super. 80, 92 (App. Div. 1981). The first sentence of Article 13-3.3 is procedural in nature and, as such, is mandatorily negotiable so long as it is not construed so as to require the Board to fill any or all vacancies as they occur. As the Appellate Division noted in State Troopers, Id. at 92, "[t]hus, even after announcing a vacancy...the [employer] has the discretion after promulgating the list, to determine that a promotion need not be made at all." In the instant case, the Board remains free to change the criteria for any position and may therefore decide not to fill a vacancy or may seek additional applicants via subsequent announcements of job vacancies.

The second sentence of 13-3.3 concerns factors that will be considered in making selections to fill vacancies. These factors are substantially similar to those found by the Appellate Division in Byram Twp., supra, to be directly concerned with qualifications or criteria for the vacancy which is "a matter of major educational policy on which the board may not be compelled to negotiate." Id. at 27. In addition, Article 13-3.3's preferential treatment of applicants presently employed by the Board is similar to that provision considered by the Appellate Division in North Bergen, supra, in which the Court found that the board of education had the right to select candidates from either within or without the faculty of the school system. Id. at 103. The Board, in seeking the best qualified candidates for vacancies, should not be restricted in its research to the faculty of the Jersey City schools. Id. We therefore find the second sentence of Article

13-3.3 is not a term and condition of employment and, as such, is not negotiable.

The first sentence of Article 13-4.1 is concerned with the category of positions administered by the Board, as described in Article 13-4, "which provide extra or additional work and for which additional compensation is offered." The listing of the categories of positions which fall under the undisputed provisions of Article 13-4 is merely an extension of the procedural aspects of Article 13-4 and does not significantly interfere with the Board's managerial prerogative. Accordingly, we find that the first sentence of Article 13-4.1 is procedural in nature and is therefore mandatorily negotiable.

The second sentence of Article 13-4.1 which states that "[t]he Board shall select personnel to fill such positions on the basis of criteria published," does not significantly interfere with a managerial prerogative so long as it is not construed to interfere with the Board's exclusive right to establish and/or change the criteria to be published. State Troopers, supra, 179 N.J. Super. at 90-92. We therefore find that the second sentence of Article 13-4.1 is mandatorily negotiable.

The third and fourth sentences in Article 13-4.1 are similar in nature to the second sentence of Article 13-3.3 in that they all are concerned with criteria and hiring preferences. In light of the rationale used in our analysis of Article 13-3.3, we therefore find that the third and fourth sentences of Article 13-4.1 are not mandatory subjects for collective negotiations.

Article 13-5 requires that "[n]ew positions, if and when established by the Board, shall be filled by selection by the Board from those who apply in writing." In this regard, Article 13-5 is similar to a clause in In re Newark Board of Education, P.E.R.C. No. 80-2, 5 NJPER 283 (¶10156 1979), in which the Commission found that a collective bargaining agreement provision requiring candidates for promotion submit a written application was procedural and therefore negotiable. In addition, the Commission in Newark went on to state that contract provisions requiring written applications from people seeking a position:

...protects against discrimination and arbitrary Board action by granting all employees the right to apply and compete for all promotional positions by submitting formal applications.

However, pursuant to our analysis of Article 13-3.3, Article 13-5 cannot be construed so as to require the Board to fill new positions even after they have been announced and applications have been received. Accordingly, Article 13-5 is a term and condition of employment that is mandatorily negotiable.

Article 13-6 requires that the Board arrange the schedules of teachers assigned to more than one school so as to minimize "insofar as possible" the amount of inter-school travel time. Pursuant to Ridgefield Park, supra, teacher assignments are an inherent managerial prerogative. Article 13-6 significantly impacts upon this prerogative. We therefore find that Article 13-6 is outside the scope of negotiations.

The first sentence of Article 13-7 and Article 13-9 are similar to Article 13-1 in that all are concerned with the assign-

ment of teachers to certain grades and/or subject matter. We find that Articles 13-7 and 13-9, like 13-1, interfere with the Board's managerial prerogative in the area of teacher assignments and are therefore not matters as to which collective negotiations are mandatory. Ridgefield Park, supra at 156.

Article 16 generally deals with promotions. While certain procedural aspects of the decision to promote are terms and conditions of employment within the scope of collective negotiations, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), other aspects, such as the qualifications and criteria for promotion as well as the method of selection of candidates, are beyond the scope of collective negotiations. Newark, supra.

Accordingly, Article 16-1 which requires that the Board promote candidates in "order of numerical ranking" is procedural in nature and is therefore a proper subject for collective negotiations, State Troopers, supra 179 N.J. Super. at 89-90, but only so long as the provision is not construed so as to require the Board to make a promotion from a list resulting from an announced vacancy.^{1/} Id. The Board retains the prerogative to promote only qualified candidates. Id. at 92. The Court in State Troopers went on to explain that:

^{1/} The Court in State Troopers found that a contract proposal similar to 16-1 was within the scope of collective negotiations:

...to the extent that it provides that, if a promotion is made from a list resulting from an announced vacancy, the candidate with the highest numerical score shall be promoted to fill the vacancy, and if there is more than one promotion that is actually made, promotions must be in the order of the highest numerical scores.

Id. at 90.

...even after announcing a vacancy with specific criteria and numerical weights attached thereto, the Division has the discretion, after promulgating the list, to determine that a promotion need not be made at all. For example, it may determine that the highest score has not produced a sufficiently qualified person to justify a promotion;...
Id.

Article 16-1.1 requires that the numerical ranking noted in 16-1 be determined through competitive examinations, which shall be made up of written and oral sections.

While it has been determined that contract provisions which require that announcement of job vacancies contain the exact weight to be assigned to each criterion, State Troopers, supra, 179 N.J. Super. at 89, the establishment of such criteria is a managerial prerogative and is not mandatorily negotiable. State v. State Supervisory Employees Ass'n, supra at 90.

In addition the Appellate Division in State Troopers noted that:

...whether a written examination shall be given involves a managerial function relating to the establishment of criteria and that the determination, together with the type, administration and scoring of the examination, is a necessary extension of the management decision.
Id. at 90.

While candidates for promotion should be made aware of the basis upon which they will be evaluated, id at 91, it is clear that Article 16-1's requirement that promotional examinations be made up of both written and oral parts, and that certain weights be given those parts, is an impermissible infringement upon a managerial prerogative.

Additionally, the fifth sentence of Article 16-1 mandates that "[t]he Board of Personnel Practices conducting the oral interview [for promotion] shall include professional educators not regularly employed by the Board of Education."

The Commission has determined that provisions allowing union participation in the promotional process infringes upon a management prerogative and are non-negotiable. In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976). While the instant provision does not allow for Association representation on the Board of Personnel Practices, it nevertheless goes beyond procedural aspects of promotion and infringes upon an inherent managerial right. For the foregoing reasons, we find that Article 16-1 is not a mandatory subject for collective bargaining.

Articles 16-2 and 16-3 deal with which positions, respectively, are excluded from and included in, the promotion policy under Article 16. We find that such a delineation unduly infringes upon a managerial prerogative in that the provisions would bind the administrative discretion of the Board to deploy its personnel "in the manner it considers most likely to promote the overall goal of providing all students with a thorough and efficient education." Ridgefield Park, supra, 78 N.J. at 156.

In addition, the decision as to which positions will or will not be subject to a promotion procedure policy in a collective bargaining agreement, is predominantly a matter of educational policy which has at most a remote and incidental effect on the terms and conditions of employment. Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17 (1973). We therefore

conclude that Articles 16-2 and 16-3 are not proper subjects of mandatory negotiations.

Article 16-7 provides that vacancies may be filled on a temporary basis until they can be filled in accordance with certain procedural requirements, which are not challenged, noted in Articles 16-4, 16-5 and 16-6.

It has been noted that "the determination as to the need for filling the higher position on a provisional basis remains, of course, within the sole discretion of the public employer. State Supervisory Employees Ass'n, supra at 95. While Article 16-7 does make reference to the strictly procedural steps detailed in Articles 16-4, 16-5 and 16-6, all of which are uncontested, Article 16-7 nevertheless unduly infringes on a managerial prerogative in the area of employee promotions. We therefore conclude that Article 16-7 is not mandatorily negotiable.

The final sentence of Article 17-1 notes that frequent transfers of teachers "are inimical to the educational process and interfere with optimum teacher performance." While such a provision might appear to be, as argued in the Association's brief, "a statement which, in no way affects the power of the Board to transfer teachers," it nevertheless infringes upon the area of educational policy which has been determined to be an inherent managerial prerogative beyond the scope of collective negotiations. Ridgefield Park, supra at 156, In re Fairview Bd. of Ed., supra.

The second sentence of Article 17-1 delineates the only reasons for which the Board may transfer teachers. Such a provision clearly infringes upon the Board's exclusive right to deploy its personnel for whatever reasons in a manner that will fulfill its

duty to provide a thorough and efficient education to all students. Ridgefield Park, supra.

In addition, the factors to be considered in transfers set forth in the second sentence of Article 17-1 are in reality criteria the Board must use in making a decision to transfer teachers. It is clear that the establishment of criteria for determining assignments is a managerial prerogative that is not subject to collective negotiations. In re Monroe Twp. Bd. of Ed., P.E.R.C. No. 80-146, 6 NJPER 301 (¶111143 1980).

Articles 17-3.1, 3.2 and 3.3 deal with criteria the Board must apply in cases of voluntary transfers. Pursuant to our decision in Monroe Twp., and the discussion of Article 17-1 above, we find Article 17-3.1, 3.2 and 3.3 to be outside the scope of collective bargaining.

The Commission and the Courts have determined that procedural aspects of the decision to transfer such as notice and opportunity to be heard, are mandatorily negotiable. In re Monroe Twp. Bd. of Ed., supra, In re Fairlawn Bd. of Ed., supra and North Bergen, supra. Accordingly, we conclude that Articles 17-4.1 and 17-4.2, which are procedural in nature, are mandatorily negotiable.

Consistent with our discussion of the criteria to be used in making voluntary transfers under Article 17-3.1, we find that Article 17-4.4 which deals with criteria, is not a proper subject of mandatory negotiations.

Article 17-5 notes that a "teacher involved in an involuntary transfer may, if aggrieved, utilize the Grievance Procedure commencing at Step III." It has been determined that

only grievances involving terms and conditions of employment can be submitted to binding arbitration. Bd. of Ed. of Bernards Twp. v. Bernards Twp. Ed. Ass'n, 79 N.J. 311 (1979). The procedural details of a grievance mechanism are a proper subject for collective negotiations, but only so far as the negotiated grievance procedure is concerned with terms and conditions of employment. Township of West Windsor v. PERC, 78 N.J. 98 (1978). Since we have ruled that only procedural aspects of the decision to transfer are negotiable, Monroe Township, supra, Article 17-5 is negotiable only to the extent that any grievances filed thereunder are concerned with violations of procedural aspects of the Board's decision to transfer unless the final step of the grievance procedure calls for advisory, as opposed to binding arbitration, in which case any aspect of a transfer decision can be the subject of a grievance. See Bernards, supra.

Article 17-6 is concerned with both procedural aspects of transfers as well as with criteria. Pursuant to our analysis of Articles 17-3.1 and 17-4.4 which delineate the criteria the Board is to use in making transfers, we find that Article 17-6 is beyond the scope of collective negotiations as the Article concerns itself with criteria. However, as noted above, procedural aspects of the decision to transfer are negotiable to the extent it directs that procedures for filling vacancies be used for summer school vacancies. In re Byram Twp, supra.

Article 18 is a proposal dealing with student discipline. It should be noted at the outset that student discipline is an area intimately related to educational policy which is an inherent managerial prerogative. Ridgefield Park, supra. Accordingly, we

find that Articles 18-1 and 18-2 are non-negotiable in that they significantly interfere with the Board's exclusive managerial responsibility in the area of student discipline.

In addition, the Board has the managerial prerogative to establish procedures to be used in the area of student discipline. In re Point Pleasant Bd. of Ed., P.E.R.C. No. 79-83, 5 NJPER 200 (¶10115 1979). Establishment of such procedures constitutes "an exercise of the Board's judgment concerning matters of educational policy...." Id, Ridgefield Park, supra. For the foregoing reasons, we find that Article 18-4 and the second sentence of Article 18-5 significantly interferes with the Board's exclusive right to establish disciplinary procedures and are therefore non-negotiable.

However, Article 18-3 allows teachers to recommend the suspension of pupils. We find this Article to be analagous to the facts in In re Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980), in which we held that the establishment of non-binding advisory forums for the expression of faculty opinions regarding student disciplinary procedures is negotiable. Accordingly, we find Article 18-3, which provides for a non-binding **recommendation** on the part of teachers to be mandatorily negotiable.

The first sentence of Article 18-5 states that "[w]hen, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may send the student to the principal." We do not find that this article significantly interferes with the Board's managerial prerogatives in the area of student discipline. Additionally, we find that the ability of teachers to deal immediately and directly, but in a non-binding way, with unruly students

"intimately and directly" affects the work and welfare of teachers. State Supervisory Employees Ass'n, supra, 78 N.J. at 67 (1978). We therefore find that the first sentence of Article 18-5 is mandatorily negotiable.

Article 19 deals with textbooks, teaching materials, and supplies. Boards of education have, in large part, been delegated the constitutional education obligation to ensure "that all children receive a thorough and efficient education." Ridgefield Park, supra at 165. In fulfilling their responsibility to provide a thorough and efficient education, boards of education clearly must have unfettered discretion in the area of curriculum and course content that best carries out this responsibility. In re New Milford, P.E.R.C. No. 81-36, 6 NJPER 451 (¶11231 1980). The Commission and the Courts have, in the past, determined that curriculum and course content decisions, including whether or not audio-visual will be used, are not mandatorily negotiable. In re Byram, supra; In re New Milford, supra; In re Middlesex County College Bd. of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977). We accordingly find that Articles 19-1, 19-3 and 19-4 are non-negotiable since they significantly infringe on the Board's exclusive right to decide as a matter of policy whether the use of textbooks, teaching materials, and supplies would be educationally beneficial.

The second sentence of Article 20-1 notes that "using regular teachers as substitutes, thereby depriving him of his preparation period...shall be done only in an emergency...." The third sentence of the article states that "[r]egular teachers shall first be assigned on a voluntary basis during their non-teaching time, prior to assignment on a rotating basis.

There is a wealth of Commission and judicial decisions holding that preparation periods are mandatorily negotiable terms and conditions of employment. In re Byram, supra; In re Weehawken Bd. of Ed., P.E.R.C. No. 80-91, 6 NJPER 50 (¶11029 1980); and In re Newark Bd. of Ed., P.E.R.C. No. 79-54, 5 NJPER 190 (¶10063 1979). The first sentence of Article 20-1 provides for a duty-free preparation period and is not in dispute. The second sentence of the Article, however, provides that in certain emergency situations, teachers may be required to give up a duty-free preparation period. Such an exception-for-emergencies provision is similar to that considered by the Appellate Division in In re Byram, supra, where the Court stated: "[f]or a board of education to relinquish its right and duty to assign teachers to supervisory tasks in exceptional cases, despite a resulting impingement upon their otherwise duty-free lunch period, would be an abdication of its responsibility in that regard." Id at 25. We, therefore, conclude that the second sentence of Article 20-1 is beyond the scope of collective negotiations.

The third sentence of Article 20-1 is concerned with the procedural aspects of the decision to eliminate duty-free periods in emergency situations. We find that these procedural formalities are negotiable. In re Fairview Bd. of Ed., supra.

Article 21 is concerned with class size and as such is not mandatorily negotiable since decisions concerning class size involve an inherent managerial prerogative. In re Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 81-58, 6 NJPER 548 (¶11278 1980), appeal pending App. Div. Docket No. A-1220-80-T4 (12/4/80). Accordingly, Articles 21-1 and 21-2 are not mandatory subjects of negotiations.

Article 29 concerns the employment of specialists by the Board. Under Ridgefield Park, supra, 78 N.J. at 156, the Board has the discretion to deploy its personnel "in the manner it considers most likely to promote the overall goal of providing all students with a thorough and efficient education." In addition, the Commission has decided that the number of employees to be employed in various positions or titles is a basic management decision and not a term and condition of employment. In re Borough of Roselle, P.E.R.C. No. 72-29, 2 NJPER 142 (1976). We conclude that Articles 29-1, 29-2 and 29-3 significantly interfere with the Board's managerial prerogative to determine the number of teachers to be employed and are, therefore, not mandatorily negotiable.

Articles 29-4 and 29-5 would require the Board to provide certain specialized equipment. In that regard, they are similar to Article 19, which we found to be non-negotiable since decisions concerning the use of textbooks, teaching materials, and supplies are an inherent managerial prerogative. Accordingly, and for the reasons and authority noted in our analysis of Article 19, we conclude that Articles 29-4 and 29-5 are not mandatory subjects for collective negotiations.

Article 30 requires that the Board maintain at least 40 substitute teachers in the substitute pool. This proposal is similar to Article 29 in that both require that the Board employ at least a certain number of employees in different job titles. For the same reasons and authority noted in our analysis of Article 29, we find Article 30-1 to be outside the scope of collective negotiations.

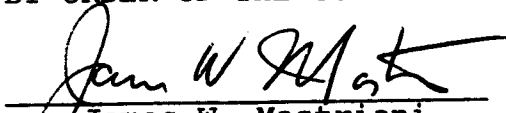
Article 42 addresses the issue of teacher qualifications which the Commission dealt with in Articles 13-1 and 13-7 herein, and in which we held that clauses, such as Article 42, which infringe upon a managerial prerogative to establish criteria and assign teachers are not mandatorily negotiable. For the reasons and authority noted in our analysis of Articles 13-1 and 13-7, we find that Article 42 is not a proper subject for collective negotiations.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Jersey City Board of Education negotiate in good faith with the Jersey City Education Association with respect to the following ARTicles or parts thereof: 13-2, 13-3.3 (first sentence), 13-4.1 (first and second sentences), 13-5, 16-1, 17-4.1, 17-4.2, 17-5, 17-6 (procedural aspects only), 18-3, 18-5 (first sentence) and 20-1 (third sentence).

IT IS FURTHER ORDERED that the Association refrain from negotiating with the Board with respect to the following Articles or parts thereof: 13-1, 13-3.2 (first sentence), 13-3.3 (second sentence), 13-4.1 (third and fourth sentences), 13-6, 13-7, 13-9, 16-1.1, 16-2, 16-3, 16-7, 17-1 (first sentence), 17-3.1, 17-3.2, 17-3.3, 17-4.4, 17-6, 18-1, 18-2, 18-4, 18-5 (second sentence), 19-1, 19-3, 19-4, 20-1 (second sentence), 21-1, 21-2, 29-1, 29-2, 29-3, 29-4, 29-5, 30-1 and 42.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels & Suskin voted in favor of this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey

November 10, 1981

ISSUED: November 12, 1981

ARTICLE 12 TEACHER EVALUATION

12-1. The Board and the Association agree, inasmuch as supervision and evaluation of teachers is a process in which those concerned are equally involved, that a committee made up of representatives of the principals, assistant principals, supervisors and representatives of the Association will be established to prepare joint recommendations as to policy regulating the supervisory function.

12-2. In cases where a teacher has been given an unsatisfactory rating, the teacher will be given a written statement setting forth the particulars of the unsatisfactory rating.

12-2.1. Where such rating endangers increment or contract status of the teacher for the ensuing year, the teacher must be notified of his status by April 1st.

12-2.2. When an unsatisfactory rating comes after April 30th, the teacher's contract status for the ensuing year cannot be denied except for cause.

12-2.3. Cause will be subject to the provision of the Grievance Procedure.

12-3. A teacher evaluation committee shall continue to meet. Such committee shall consist of three (3) teachers appointed by the Association and three (3) administrators appointed by the Board. The committee shall meet and submit a written report with recommendations on or before April 30, 1979.

ARTICLE 13 TEACHING ASSIGNMENTS

13-1. Teachers shall not be regularly assigned to teach subjects or grades outside the scope of their teaching certificate.

13-2. Assignments shall be given to teachers at least three (3) days before the closing of school.

13-3. Extra-compensation positions are those listed in Schedule H.

13-3.1. Whenever a vacancy exists in a position classified as an extra-compensation position, notice shall be posted in all schools inviting those qualified to apply in writing. The notice will contain requirements and duties. Each applicant shall submit the application by certified mail, return receipt requested.

13-3.2. In instances when immediate assignment is imperative, temporary assignment may be made. Notice of a vacancy will be posted within seven (7) school days after the vacancy occurs.

13-3.3. Selection of personnel to fill all vacancies will be made by the Board from an alphabetized list of those who apply within the time specified in the announcement. The Board will give preference, in making its selection, to qualified applicants presently employed by the Board, giving consideration to experience, seniority and quality of performance based upon prior written evaluations in the Jersey City School System.

13-4. Whenever vacancies or openings occur in those positions administered through the Board which provide extra or additional work and for which additional compensation is offered, notice will be posted in the schools inviting those qualified to apply in writing.

13-4.1. This category shall consist of the following positions:

Summer School and After School Teaching
Accredited Evening High School Teaching
Athletic Coaches
Book and Curriculum Evaluation positions
Special Project positions

The Board shall select personnel to fill such positions on the basis of criteria published. Priority in selection of personnel for positions in the Accredited Evening High School shall be based on prior teaching experience in the Accredited Evening High School. Additional assignments shall be made from a list of those teachers in the Jersey City school system who apply in writing.

13-5. New positions, if and when established by the Board, shall be filled by selection by the Board from those who apply in writing.

13-5-1. Selection will be based on published criteria.

13-5-2. Notice of such new positions will be posted in all schools. Published notices will contain the duties, requirements and qualifications for the position.

13-6. Schedules of teachers who are assigned to more than one school shall be so constructed as to limit, insofar as possible, the amount of inter-school travel to a minimum.

13-7. The Superintendent shall assign all newly appointed personnel to their specific positions within that subject area and/or grade level for which the Board has appointed the teacher. The Superintendent shall give notice of assignments to new teachers as early as possible but no later than August 22.

13-8. In the event that changes in schedules, class and/or subject assignments, building assignments or room assignments are proposed, said teacher affected shall be notified promptly in writing.

13-9. In order to assure that pupils are taught by teachers working within their areas of competence, teachers shall not be assigned outside the scope of their teaching certificates and/or their major or minor fields of study, except where an emergency exists.

ARTICLE 14 TEACHER FILES

14-1. Teachers, upon presentation of advance written request, may inspect their personnel files.

14-2. Teachers shall have the right to add written comments to any material filed and these written comments, after review by the Assistant Superintendent of Schools in charge of Personnel, shall be made part of the teacher's personnel file.

14-3. In the event material of a critical, derogatory or unfounded nature is to be placed on file, the teacher involved shall be notified and given the opportunity to review such material. The teacher's written comments, if any, relative to such material shall be made part of the teacher's file.

14-4. Completed evaluation forms are to be kept in personnel folders of all teachers.

ARTICLE 15 TEACHER MEETINGS

15-1. Principals of individual schools or other duly authorized personnel shall notify the faculty of any meeting to be held at which their attendance is required at least two (2) days in advance of the meeting date, except in emergencies. Notice of the meeting shall include the proposed agenda.

15-2. The Board and the Association recognize that meetings requiring attendance of the entire faculty of a building after regular school hours should only be called for such items as those which relate to the safety and welfare of students and teachers and for other significant purposes.

15-3. Normally, no more than two (2) meetings per month shall be called and, normally, such meetings shall not exceed forty-five (45) minutes. If, in the judgment of the principal, it is necessary to hold any additional meetings, the Association representative will be notified, under normal circumstances, two (2) days in advance and, in all circumstances, in advance.

15-4. The Association Director shall have an opportunity to speak during any meeting for a period normally not longer than five (5) minutes.

15-5. Should the teachers in any building feel that an excessive number of meetings are being called, they may act according to the Grievance Procedure beginning at Step III.

ARTICLE 16 PROMOTIONS

16-1. The administrative and supervisory positions listed below shall be filled by Board appointment, in order of numerical ranking from appropriate eligibility lists.

16-1.1. Numerical ranking shall be determined through competitive examinations conducted by the

ARTICLE 17
TRANSFERS

Board of Personnel Practices. The examinations shall consist of a written section which shall have a weight of 40%. No person shall be allowed to take the oral section of the examination unless he has passed the written part. The oral interview shall have a weight of 60%. The Board of Personnel Practices conducting the oral interview shall include professional educators not regularly employed by the Board of Education.

16-2. The positions of Superintendent of Schools, First Assistant Superintendent of Schools and Assistant Superintendent of Schools are not within the scope of this promotional policy.

16-3. Positions covered by this policy are as follows:

Director, High School Principal, Assistant Director, Grammar School Principal, High School Vice Principal, Supervisor, Primary Principal, Grammar School Assistant Principal, and Assistant Supervisor.

16-4. It is agreed that, in administering this policy:

Vacancies to be filled shall be publicized in all schools within ten (10) school days after an opening occurs.

16-5. All publicity and notices of such vacancies and positions shall set forth qualifications for and duties of the position.

16-6. Promotional examinations shall be held within sixty (60) days following said announcement. Any necessary extension of this period shall be made by mutual agreement between the Office of the Superintendent of Schools and the Association.

16-7. Vacancies arising may be filled on a temporary basis until they can be filled in accordance with the provisions of Section 4, 5 and 6 of this Article.

16-8. All vacancies and positions shall be filled without regard to race, age, creed, color, religion, nationality, sex, or marital status.

This article is subject to the New Jersey Supreme Court decision, August 2, 1978 (Ridgefield Park Education Association vs. the Board of Education of Ridgefield Park.)

17-1. The Board and the Association believe that frequent transfers of teachers from one school to another are inimical to the educational process and interfere with optimum teacher performance. Only true vacancies caused by establishment of new positions, resignation, retirement, termination or death shall be filled by transfers. Therefore, they agree as follows:

17-2. In all cases of transfer, the following shall apply:

17-2.1. In cases of *Voluntary* transfer, seniority begins when the teacher assumes the new position.

17-2.2. In cases of *Involuntary* transfer, the teacher shall retain all accrued seniority.

17-2.3. For the purposes of this Article, promotional and extra compensation positions applied for shall be deemed voluntary transfers.

17-3. Voluntary Transfers

A teacher seeking transfer to another school shall submit a written request to the Superintendent of Schools no later than March 1st of the current year. The teacher shall state the reasons for the request, the school, grade and/or subject to which the teacher seeks transfer. Three (3) choices, in order of preference, if there be preference, shall also be stated. If none of the choices is available then the written request shall be deemed withdrawn.

17-3.1. In cases of voluntary transfer the following criteria shall be applied.

- A. Availability of vacancies.
- B. Seniority in the Jersey City Public Schools as a regular teacher.
- C. Seniority as a regular teacher in the school from which the transfer is requested.

ARTICLE 18
STUDENT DISCIPLINE

The Board and the Association agree that:
18-1. Teachers have a primary disciplinary responsibility.

18-2. It is the responsibility of administrators to support the teacher in this role.

18-3. Teachers have the right to recommend the suspension of pupils from their classes.

18-4. This procedure shall not contravene any statutory provision affecting the right of the principal to suspend.

18-5. When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may send the student to the principal. In such cases, the principal shall arrange as soon as possible—and under normal circumstances not later than the conclusion of the following school day—a conference among himself, the teacher, the parent, and possibly an appropriate specialist, to discuss the problem and to decide upon appropriate steps for the child's return.

ARTICLE 19
TEXTBOOKS, TEACHING MATERIALS,
AND SUPPLIES

19-1. The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies, and equipment of sufficient quality and quantity to enable teachers properly to fulfill their teaching responsibilities.

19-2. To be sure that all textbooks are available for the first day of school, textbooks should be ordered in time for an August 15th delivery. Transfer of books between schools shall be facilitated.

19-3. QUANTITIES. All schools should have, in sufficient number and kind, such audio-visual

17-3.2. Transfers from any school shall not exceed 5% of the teaching staff in that school so that maximum stability may be maintained in every school.

17-3.3. Convenience and wishes of the teacher requesting transfer will be honored when they do not conflict with the instructional requirements and the best interest of the school system.

17-3.4. When a request for transfer is not granted, the teacher shall be notified in writing by the office of the Superintendent of Schools.

17-3.5. A list of all transfers shall be made available to the Association immediately upon request.

17-4. Involuntary Transfers

17-4.1. The teacher involved shall be notified at a meeting with the principal or immediate superior of the intention to request the transfer and of the reasons therefore.

17-4.2. This meeting shall be held, under normal circumstances, three (3) days before the end of the school year.

17-4.3. The reason or reasons for the request shall also be set forth in writing and presented to the Superintendent of Schools and to the teacher.

17-4.4. In cases of involuntary transfer, the following criteria shall apply:

- A. For good cause
- B. Seniority in the Jersey City Public Schools as a regular teacher.
- C. Seniority as a regular teacher in the school from which the transfer is requested.

17-5. The teacher involved in an involuntary transfer may, if aggrieved, use the Grievance Procedure commencing at Step III.

17-6. Transfers made during the summer vacation by the Superintendent of Schools shall be governed by the methods and criteria applicable to involuntary transfer.

equipment as: record players, tape recorders, film and filmstrip projectors, opaque-overhead-slide projectors, televisions, radios, and all accompanying multi-media instructional materials. This shall also include all duplicating and copying machines and materials.

19-4. AVAILABILITY. All such multi-media instructional devices and materials shall be arranged and located to facilitate maximum utility by all members of the instructional staff, under the auspices of the principal.

19-5. Petty cash funds shall be established at each school in the following amount for each school year.

School with 0-500 students	\$150.
School with 501-1000 students	\$200.
School with 1001-1500 students	\$250.
School with 1501 and more students	\$300.

ARTICLE 20

TEACHING CONDITIONS

(Preparation-on-call periods)

20-1. PREPARATION PERIOD—Each teacher is to have an uninterrupted preparation period each day, when possible. The practice of using a regular teacher as a substitute, thereby depriving him of his preparation period, is undesirable and shall be done only in an emergency where regular substitutes are not available. Regular teachers shall first be assigned on a voluntary basis during their non-teaching time, prior to assignment on a rotating basis.

20-2. HIGH SCHOOL—Secondary teachers shall not be assigned to more than two (2) subject matter teaching preparations per day without full and sufficient cause.

20-2.1. The normal academic load of a teacher in the high schools shall consist of five (5) teaching periods, a home room, and a special assignment. In Physical Education, Industrial Arts, and other double-period subject areas, variation from the normal must occur.

20-2.2. Teaching periods will be spread out over the eight-period day so that, with the exception of teachers of double-period subjects, a teacher will normally teach no more than two periods consecutively. In all instances, efficient utilization of the school facilities and personnel must be accorded the highest priority to insure proper scheduling.

20-3. ELEMENTARY SCHOOLS—The Board and Association agree to strive for a goal of three (3) on-call periods per week in the elementary schools. This program shall be implemented by relieving teachers of classroom responsibilities when such specialists as teachers of art, music, industrial arts, home economics and physical education take over classes. Principals shall be encouraged to work toward this goal when scheduling specialists to assure uniform preparation time among each building faculty. The Board and Association agree that in cases of emergencies affecting the normal operation of the school, teachers may be called upon to cover classes. In such emergencies, available teachers will be selected from a rotating list to insure equitable distribution of such assignments.

20-4. In the event a classroom teacher is required to cover for an absent teacher, he/she shall be compensated per the following formula:

20-4.1. One day shall be added to the sick leave bank for every five (5) periods, (study, assigned duty or recitation) taken in the high schools.

Assumption of a Home Room assignment in the high schools shall be considered equal to one-half of a study, assigned-duty, or recitation period.

20-4.2. In the elementary schools, a teacher shall be given one additional sick leave bank day for every (5) on-call periods given to covering service.

20-4.3. A teacher shall be given an additional sick leave bank day for every five (5) days on which he/she takes extra pupils into his/her room.

20-4.4. All teachers who are not under tenure shall be required to submit lesson-plan books.

20-4.5. All teachers shall be required to have available emergency lesson plans to provide direction to substitute teachers.

10/10/60

20-4.6. All teachers shall plan their work and have such plans ready for presentation to authorized personnel at the time of supervisory visitations.

20-5. **NON-TEACHING DUTIES:** A joint committee of the Association and the Central Administration shall continue to study the feasibility of implementing an aide program to relieve teachers from non-teaching chores such as:

- keeping attendance register
- hall and playground duty
- lunchroom supervision

Recommendations of this committee shall be forwarded to the Association and the Board from time to time.

20-6. The in-school work day for all teachers shall consist of not more than five (5) hours and forty-five (45) minutes which shall exclude a duty-free lunch period as guaranteed to teachers as follows:

20-7. **LUNCH PERIOD—HIGH SCHOOL:** All teachers in the high schools shall have a duty free lunch period of at least forty-five (45) minutes, except in instances where temporary scheduling (e.g. assembly days) may lessen the time for both pupils and teachers.

20-7.1. **LUNCH PERIOD, ELEMENTARY SCHOOL—**All teachers in the elementary schools shall have a duty-free lunch period of at least sixty (60) minutes, except for court duty which shall not exceed ten (10) minutes at the end of the lunch hour and shall be scheduled on a rotating basis.

20-7.2 Teachers of all Special Education classes shall have a duty-free lunch period of one-half hour. Lunchroom aides will be employed to effectuate the above.

ARTICLE 21
CLASS SIZE

21-1. The Board will continue to move toward attainment of the desired goal, class-size reduction, through its program of increased physical facilities.

21-2. The desirable median class size in elementary and secondary schools shall be 30 pupils, exclusive of health and physical education classes. Insofar as special education and kindergarten are concerned, State guidelines shall be followed, and these classes will not be used in computations to arrive at the median class size stated above.

ARTICLE 22

PROTECTION OF TEACHERS, STUDENTS,

AND PROPERTY

22-1. The Board will provide such legal services as may be necessary to any teacher on whom any assault and/or assault and battery is made during the course of his-her employment.

22-2. When absence arises out of or from assault or injury while acting in discharge of duties, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

22-3. Teachers shall immediately report cases of assault, physical or verbal, suffered by them in connection with their employment to their principal or other immediate superior.

22-3.1. Such notifications shall be immediately forwarded to the Superintendent, who shall comply with any reasonable request from the teacher for information in the possession of the Superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

22-4. If criminal or civil proceedings are brought against a teacher alleging that he-she committed an assault in connection with his-her employment, the Board of Education shall furnish legal counsel to defend him-her in such proceedings.

22-5. Whenever any civil or administrative action has been or shall be brought (except an action, civil or administrative, instituted by the Board) against the teacher for any act or omission arising out of and in the course of the performance of his or her duties,

- a. Hospital room and board and miscellaneous costs.
- b. Out-patient benefits.
- c. Laboratory fees, diagnostic expenses, and therapy treatments.
- d. Maternity costs.
- e. Surgical costs.
- f. Major-medical coverage.
- g. An individual dental plan will be provided.
- h. An individual prescription plan will be provided.

27-2.2. The Board shall provide to each teacher a description of the health-care insurance coverage provided under this section which shall include a clear description of conditions and limits of coverage as listed above.

27-2.3. The Board shall provide each teacher with a \$2,500 life insurance policy and a \$2,500 death and dismemberment policy. Upon retirement, the life insurance coverage shall be decreased to \$1,000 for each retired teacher, and the death and dismemberment policy shall be cancelled. The premium for the post-retirement life insurance in the amount of \$1,000 shall be borne by the retiree.

ARTICLE 28

ACADEMIC FREEDOM

28-1. In our representative democracy, in which ultimate power is retained by the people and exercised through delegation of authority, the Board and the Association advocate the realization of the full potential of each individual by recognition of and respect for his/her dignity. It therefore follows that the education of each individual must develop the essential fundamental processes and those skills, understandings, and attitudes which will affect his/her harmonious development as a spiritual, intellectual, physical, emotional, and social being. It is recognized that these democratic values can best be transmitted in an atmosphere which is free from censorship and artificial restraints upon free inquiry and learning, and in which academic freedom for teacher and student is encouraged.

28-2. Academic freedom shall be guaranteed to teachers, and no special limitations shall be placed upon study investigation, presenting and interpreting facts and ideas concerning man, human societies, the physical and biological world, and other branches of learning, which do not conflict with the philosophy, underlying principles, objectives and content of the courses of study adopted by the Board of Education.

ARTICLE 29 SPECIALISTS

29-1. The Board shall employ, during the life of this Agreement, additional specialists to meet the needs of the school system to the extent that availability of funds, space, and personnel permit.

29-2. The Board agrees that the number of specialists employed shall not be reduced by the Board during the term for this Agreement.

29-3. For and during the life of this Agreement, the Board will provide at least nineteen (19) specialists who will be hired in accordance with educational needs.

29-4. For and during the life of this Agreement, the Board will provide one (1) mobil learning center in addition to those that may be in existence in accordance with educational needs.

29-5. For and during the life of this Agreement, the Board will provide reading labs in three (3) schools in addition to those that may be in existence and in accordance with educational needs.

ARTICLE 30 SUBSTITUTE POOL

30-1. The number of substitutes in the Substitute Pool shall be maintained at no less than forty (40).

ARTICLE 31

EXTRA-COMPENSATION POSITIONS

31-1. Extra-compensation positions shall include, but not be limited to, those listed in Schedule H.

new advice. The club would provide mental health advice by letter and then recommendations of psychologists and psychiatrists. The club would also make preventive diagnoses in the area of drug abuse. The committee shall consist of three members appointed by the Board and two by the Association.

40-4. The Joint SPECIAL EDUCATION COMMITTEE consisting of three (3) representatives of the Board and three (3) members of the Association shall continue to evaluate the existing special education program and to make recommendations for implementation of further special education programs to the Board.

40-5. IN-SERVICE TRAINING—To encourage members of the Professional Staff in the Jersey City Public Schools to improve their professional skills, the Board agrees to provide in-service courses each year, the nature and content of such courses to be decided by the Board and association representatives. To plan and implement such in-service training, a committee shall be established with five members, three to be named by the Association and two to be named by the Board.

40-6. The SUPERINTENDENT'S COMMITTEE ON FEDERAL FUND PROJECTS—This committee shall develop projects to be undertaken with federal funds. The superintendent shall appoint those teachers selected by the Association.

40-7. The Joint SCHOOL PARKING FACILITIES COMMITTEE consisting of two (2) representatives from the Board and two (2) members from the Association shall investigate the availability of space and the feasibility of utilizing such space at each school site for the purpose of parking facilities for members of this bargaining unit. This committee shall submit a written report with recommendation within the 1978-80 school years.

40-8. The Joint COMMITTEE ON TEACHER EVALUATION shall continue to meet to prepare joint recommendations as to policy regulating the supervision and evaluation of teachers.

40-9. The Joint COMMITTEE ON NON-TEACHING DUTIES shall continue to study the

feasibility of implementing an able program and shall forward recommendations to the Association and the Board from time to time.

40-10. The ATHLETIC AWARDS COMMITTEE comprised of members of the Board and representatives of the Association shall continue to evaluate and establish a system of awards for athletic contests.

ARTICLE 41

BREAKFAST PROGRAM

41-1. The Board supports the concept of a school breakfast program as established under Federal guidelines and agrees to continue the joint **BREAKFAST COMMITTEE** consisting of three (3) representatives of the Board and two (2) members of the Association. The Committee shall report to the Board periodically on progress achieved.

ARTICLE 42

TEACHER EMPLOYMENT

42-1. The Board shall hire—to the fullest extent possible—only fully certified teachers holding stand-ard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

ARTICLE 43

DRIVER EDUCATION

43-1. The Board will consider the matter of providing behind-the-wheel instruction as part of the existing driver education course. The Board shall make use of at least two driving simulators in existing driver education courses.

ARTICLE 44

SPECIAL CLASSES

44-1. The Board shall establish during the life of this Agreement new classes to meet the needs of the school system to the extent that availability of funds, space, and personnel permit.

ARTICLE 45

BI-LINGUAL TEACHERS

45-1. The Board shall employ during the life of this Agreement additional bi-lingual teachers to the extent that availability of funds, space, and personnel permit.