

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BROOKDALE COMMUNITY COLLEGE,

Petitioner,

-and-

Docket No. SN-76-48

BROOKDALE COMMUNITY COLLEGE  
FACULTY ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the College, the Commission rules on whether certain matters in dispute between the College and the Faculty Association are within the scope of collective negotiations. The College sought a determination as to whether the number of work days for certain tenured faculty members was a required subject for negotiations or whether certain cited portions of Title 18A proscribing "reductions in salary" except for inefficiency, incapacity, conduct unbecoming a teacher or for other just cause, [N.J.S.A. 18A:60-2 and N.J.S.A. 18A:60-8] precluded negotiations thereon and whether, assuming the parties negotiated a reduction in work days, they could negotiate a salary for affected employees which was less than their salaries when they worked more days, without running afoul of the same two cited sections of Title 18A.

The Commission determines that, in the context of this case, the number of days in the work year and the salary paid to employees are required subjects of negotiations, notwithstanding the provisions of Title 18A regarding tenure for faculty members of county colleges. The Commission notes that its reading of the applicable sections of Title 18A does not persuade it that Title 18A intends to guarantee employees any particular work year which is dependent upon the length of the work year of the employee at the time that tenure was obtained. If this were the case, public employers such as the College would be effectively precluded from modifying their academic structures absent a substantial turnover of tenured employees because if many of its employees had achieved tenure while working either ten months or twelve months, an employer could not readily shift to a full-year or an academic-year program as the case might be. The Commission further notes that a tenured employee's salary cannot be reduced so long as the employee is doing the same job, but if the work year changes as the result of mandatory negotiations, the employee may experience a reduction in salary or an increase in salary depending on whether the work year decreases or increases, again as a result of mandatory negotiations.

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Appearances:

For the Petitioner, Murray, Meagher & Granello, Esqs.  
(Mr. Robert Emmet Murray, of Counsel; Mr. Malachi J.  
Kenney, on the Brief)

For the Petitioner, Sterns & Greenberg, Esqs.  
(Mr. Michael J. Herbert, of Counsel)

DECISION AND ORDER

On June 11, 1976, a Petition for Scope of Negotiations Determination (the "Petition") was filed with the Public Employment Relations Commission (the "Commission") by Brookdale Community College (the "College") seeking a determination as to whether a matter in dispute between the College and the Brookdale Community College Faculty Association (the "Association") was within the scope of collective negotiations.<sup>1/</sup> The disputed matter arose

1/ The Commission's authority to render such determinations is found at N.J.S.A. 34:13A-5.4(d) which provides as follows: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

during the course of negotiations between the parties for a successor agreement to the contract which expired on June 30, 1976. It relates to the work year of the faculty.

The parties agree that there are no disputed factual issues and they framed the issues as follows:

- "1. Is a proposal to reduce the work year of certain 12-month faculty members from 210 work days to 185 work days within the scope of collective negotiations or is such proposal contrary to the provisions of N.J.S.A. 18A:60-2 and 18A:60-8?
2. Should the parties negotiate a reduction of work days pursuant to the proposal described above, may the parties negotiate a salary for such employees less than their salary for the prior 210 work day year, or are such negotiations contrary to the provisions of N.J.S.A. 18A:60-2 and 18A:60-8?" 2/

Essentially, the parties are seeking a determination as to whether the number of work days is a required subject for negotiations or whether the cited portions of Title 18A preclude negotiations thereon <sup>3/</sup> and whether, assuming the parties negotiate

2/ The parties signed a one-page Statement of Issues and Statement of Dispute on July 26, 1976 which is the source of the statement of the issues.

3/ N.J.S.A. 18A:60-2 and 60-8 provide as follows:  
N.J.S.A. 18A:60-2 states: "No such professor, associate professor, assistant professor, instructor, supervisor, registrar, teacher, or other person employed in a teaching capacity, so under tenure, shall be dismissed or subjected to a reduction in salary except for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause, and only in the manner prescribed by subarticle B of article 2 of chapter 6 of this title."  
N.J.S.A. 18A:60-8 states: "Faculty members shall be under tenure in their academic rank, but not in any administrative position, during good behavior, efficiency and satisfactory professional performance, as evidenced by formal evaluation and shall not be dismissed or reduced in compensation except for inefficiency,

(Continued)

a reduction in workdays, the parties may negotiate a salary for the affected employees which is less than their salaries when they worked more days without running afoul of the same two above-quoted sections of Title 18A.

Although both parties had filed their initial briefs by August 25, 1976, the Commission, by letter dated September 24, 1976, asked the parties to address themselves to the question of whether a reduction in the number of days of employment with some proportionate decrease in salary would constitute a reduction in salary or compensation as set forth in Title 18A. The College filed a supplemental brief on this point on October 14, 1976 and the Association submitted a letter reply on November 1, 1976.

It is the position of the College that the above questions must be answered in the affirmative. As to the first issue, the College argues that hours of employment and work year, but not a college calendar, have been established as terms and conditions of employment which are, therefore, mandatorily negotiable and that Title 18A, which guarantees the preservation of a title, rank or position for which certification is required, does not

3/ (Continued)

unsatisfactory professional performance, incapacity or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes, Sections 18A:6-9 to 18A:6-29 after employment in such college or by such board of trustees for (a) 5 consecutive calendar years; or (b) 5 consecutive academic years, together with employment at the beginning of the next academic year; or (c) the equivalent of more than 5 academic years within a period of any 6 consecutive academic years."

prevent the negotiation of a change in the work day or work year because tenure does not accrue to duties or hours of employment. The College contends that the second issue concerns salaries which are clearly mandatorily negotiable and that the cited provisions of Title 18A do not preclude negotiations which may lead to a reduction in salaries or compensation. The College argues that collective negotiations as mandated by the New Jersey Employer-Employee Relations Act is a two-way process of give and take. To prevent one party from proposing decreases in required subjects would preclude fair and equitable negotiations. Furthermore, the Act mandates negotiations regarding salaries and this obligation takes precedence over any contrary statutory provision. The amendment to Section 8.1, P.L. 1968, c. 303 contained in P.L. 1974, c. 123 is cited to support this argument.<sup>4/</sup> Thus, it is argued, it is no longer necessary to give effect to provisions of Title 18A which are in conflict with the negotiations obligation imposed by the Act. The College also argues that such a result would be consistent with prior Commission decisions. Finally, the College suggests that, because the tenure statutes protect individual employees and the Act is

<sup>4/</sup> Section 8.1 of P.L. 1968, c. 303 provided: "Nothing in this act shall be construed to annul or modify, or to preclude the renewal or continuation of any agreement heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any statute or statutes of this State." The section as amended by P.L. 1974, c. 123 now reads: "Nothing in this act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current term heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any pension statute or statutes of this State."

concerned with a collective, bilateral relationship between roughly equal parties, there is no essential conflict between the purposes of the two statutes.

In the supplementary brief, the College addressed the question of whether its proposals to reduce the work year and the compensation of twelve month employees were in conflict with the provisions of the tenure law. The College maintained that, although it would violate the tenure statutes for it to reduce salaries below the ten-month level, salaries paid in excess of the ten-month level are not subject to the protection of the tenure statutes because only the ten-month position is protected by tenure. The College points out that the last collective negotiations agreement between the parties refers to twelve-month or "annual" contracts and ten-month or "regular" contracts and that the amount of the twelve-month contract is stated in terms of an increase over the ten-month, regular contract.

The Association contends that the College's proposals are illegal because they violate the Education Law. It is the Association's position that if an employee acquired tenure while under a twelve-month contract, that employee has a vested right to a twelve-month contract, or at least the compensation associated with that contract.

The Association cites several cases to demonstrate that the tenure statute prevents a reduction in salary for a tenured employee and further contends that neither Chapter 303 of the Laws of 1968 nor the amendments thereto, Chapter 123 of the Laws

of 1974, which concededly broadened the scope of negotiations, diminish tenure rights accorded to individual employees. These remain outside the realm of the negotiations process and within the jurisdiction of the Chancellor of Higher Education.

The Association also argues that the adoption by the Legislature of Chapter 163 of the Laws of 1973 makes clear that negotiations regarding tenure are precluded. That law permits the conferral of tenure upon an individual faculty member after two consecutive academic years in specified circumstances and also provides that "The provisions of this section shall not be negotiable as a term and condition of employment under the New Jersey Employer-Employee Relations Act, P.L. 1968, c. 303."

We find this argument to be without merit. The purpose of that law is to prevent negotiations only with respect to that specific section. Although not germane to this case, it would appear that, by inserting that provision, the Legislature anticipated negotiations regarding other aspects of tenure which it apparently identified as a term and condition of employment.

Finally, the Association, citing Association of New Jersey State College Faculties, Inc. v. Dungan, 64 N.J. 338 (1974) and our decision in In re State of New Jersey (Stockton State College), P.E.R.C. No. 76-33, 2 NJPER 147 (1976), contends that both the Supreme Court and this Commission have recognized that tenure is not negotiable. Both those cases, however, are clearly distinguishable in that they refer to the negotiability of tenure quotas.

Neither party would dispute that, in the abstract, both the number of days in the work year and the amount of salary or compensation paid to employees by employers for work performed are mandatorily negotiable terms and conditions of employment.<sup>5/</sup> Rather, the issue is whether the cited sections of Title 18A preclude negotiations over these issues. Assuming that the Title 18A provisions apply in this case, it would be necessary to determine whether those provisions have been superceded by the negotiations obligation imposed by the Act and especially by the amendment to N.J.S.A. 34:13A-8.1 of the Act contained in Section 10 of c. 123, P.L. 1974.

Our reading of Title 18A does not persuade us that Title 18A does or intends to guarantee employees any particular work year which is dependent upon the length of the work year of the employee at the time that tenure was obtained. If this were the case, and this is especially true in a community college setting such as this are where substantial experimentation with calendars and schedules is occurring, public employers would be effectively precluded from modifying their academic structures absent a substantial turnover of tenured employees because if many of their employees had achieved tenure while working either ten months or twelve months, employers could not readily shift

<sup>5/</sup> See Bd. of Ed. of Englewood v. Englewood Teachers Ass'n., 64 N.J. 1, 6-7 (1973), Burlington Cty. College Faculty Ass'n. v. Bd. of Trustees, Burlington County College, 64 N.J. 10, 12 (1973) and In re Piscataway Twp. Bd. of Ed., P.E.R.C. No. 77-37, NJPER \_\_\_\_\_ (1977).



to a full-year or an academic year program as the case might be. Rather, tenure arose out of a whole different set of needs relating to the desire to protect teachers and faculty members from dismissal because of their exercise of academic freedom, political views, espousal of unpopular or controversial ideas, etc. Therefore, faculty members cannot be dismissed or subjected to a reduction in salary except for limited reasons and then only in a fashion consistent with certain procedural safeguards. In our view, tenure was not intended to guarantee a particular work year. Similarly, when Title 18A addresses a reduction in salary, the context must be again considered. A tenured employee's salary cannot be reduced so long as the employee is doing the same job but, if the work year changes (as a result of mandatory negotiations), the employee may experience a reduction in salary or an increase in salary depending on whether the work year decreases or increases,<sup>6/</sup> again as a result of mandatory negotiations.

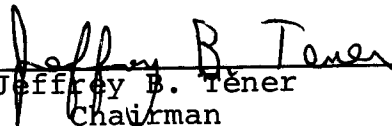
Therefore, we conclude that the Association must negotiate, upon demand, with the College regarding the number of days to be worked in the year and the amount of salary to be paid for the work notwithstanding the cited portions of Title 18A. We find those sections to be inapplicable to the instant dispute.

<sup>6/</sup> This should not be taken to mean that there will necessarily be a change in salary under either of those circumstances. It merely recognizes that possibility.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7, the Public Employment Relations Commission hereby determines that, in the context of this case, the number of days in the work year and the salary paid to employees are required subjects of negotiations, notwithstanding the provisions of the Education Laws regarding tenure for faculty members of county colleges. Accordingly, the Brookdale Community College Faculty Association is hereby ordered to negotiate in good faith regarding these matters upon demand of Brookdale Community College.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett, Hurwitz and Parcels  
voted for this decision.  
Commissioner Hurwitz voted against this decision.  
Commissioner Hipp was not present.

DATED: Trenton, New Jersey  
March 16, 1977

ISSUED: March 17, 1977