

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE ADMINISTRATORS AND SUPERVISORS  
ASSOCIATION OF THE JERSEY CITY  
SCHOOL SYSTEM,

Petitioner,

-and-

Docket No. SN-82-46

JERSEY CITY BOARD OF EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Public Employment Relations Commission holds that certain aspects of a clause concerning promotions in a collective agreement between the Administrators and Supervisors Association of the Jersey City School System and the Jersey City Board of Education are mandatorily negotiable while other aspects are not. The Commission distinguishes between promotional procedures, which are negotiable, and qualifications, criteria, and methods of selection, which are not. The Commission specifically holds that a public employer cannot be contractually compelled to give written examinations in order to determine who shall receive a promotion.

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Appearances:

For the Petitioner, Margulies & Margulies, P.A.  
(Jack Jay Wind, of Counsel)

For the Respondent, Jersey City Board of Education  
Legal Department (Louis Serterides, of Counsel)

DECISION AND ORDER

On January 12, 1982, the Administrators and Supervisors Association of the Jersey City School System (the "Association") and the Jersey City Board of Education (the "Board") filed a joint Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. They seek a ruling on the enforceability of an Article in their collective agreement concerning promotions. Both parties have filed letter briefs.

The parties filed the instant petition pursuant to an order of the Honorable Judge Castano of the Superior Court of New Jersey, Chancery Division. The Association had commenced litigation in which it sought to enjoin an individual's continued employment in an acting supervisory position pending the administration of a promotional examination. The Association apparently contended that Article VII of its collective agreement barred this

"promotion" until competitive examinations had been held. The Board apparently responded that it had a non-negotiable managerial prerogative to determine whether or not to hold promotional examinations and that any contractual promise to do so was unenforceable. Pursuant to Ridgefield Park Ed. Assoc. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 153-154 (1978), Judge Castano refrained from passing on this scope of negotiations issue and directed the parties to file this petition. He has retained jurisdiction over the Association's contract claims pending our determination of this matter.

In Jersey City Board of Education and Jersey City Education Association, P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1982) ("Jersey City"), we recently decided the negotiability of many of the identical provisions now in dispute. We distinguished between procedural aspects of promotions, which are negotiable, and qualifications, criteria, and methods of selection for promotion, which are not. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); In re Newark Bd. of Ed., P.E.R.C. No. 80-2, 5 NJPER 283 (¶10156 1979). We will apply the same distinctions in the following provision-by-provision review.

Article VII, section A provides:

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

For the reasons stated in Jersey City, 7 NJPER at p. 685, this provision is mandatorily negotiable and enforceable so long as it is not construed to require the Board to make a promotion after

announcing a vacancy. See also State of New Jersey Dept. of Law & Public Safety v. State Troopers NCO Ass'n of New Jersey, 179 N.J. Super. 80, 90 (App. Div. 1981) ("State Troopers NCO").

Article VII, section B provides:

Numerical ranking shall be determined through competitive examinations conducted by the 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. All applicants shall be eligible for proper certification before they are allowed to take the written section of the examination.

In State Troopers NCO, the Court held mandatorily negotiable contractual provisions which required the employer to announce in advance the promotional criteria it planned to use and the relative weight to be attached to each criteria. Such provisions protect the reasonable need of employees to know the basis upon which they will be evaluated. The public employer however, must remain free to alter unilaterally the criteria or method of selection, provided it complies with any notice provisions. A contractual provision cannot require an employer to use a particular method of evaluation during the duration of a contract. The Court specifically approved our previous holding that whether a written examination shall be given involves a managerial function relating to the establishment of criteria and that such a determination, together with the type, administration, and scoring of the examination, is a necessary extension

of managerial decision-making. For the reasons stated in State Troopers NCO, 179 N.J. Super at pp. 90-92, and Jersey City, 7 NJPER at pp. 685-686, section B is non-negotiable because it requires the Board to base promotions upon competitive examinations during the duration of the contract.<sup>1/</sup>

Article VII, section C provides:

Positions covered by the Article Are: Director, Assistant Director, High School Principal, High School Vice Principal, Supervisor, Primary Principal, Grammar School Assistant, Assistant Supervisor, Chief School Psychologist, and any newly created positions of a supervisory or administrative nature requiring State Certification as listed in the Recognition clause.

For the reasons stated in Jersey City, 7 NJPER at p. 686, provisions which state which positions are included in a promotion policy are non-negotiable to the extent they might restrict the Board's ability to promote employees of its choosing or to select employees for these positions by means other than promotion. We add, however, that such provisions are negotiable to the extent they define the positions to which negotiated procedural protections will adhere, if the employer does decide to fill such positions through promotions.

Article VII, section D provides, in part:

1. Vacancies to be filled shall be adequately publicized in all schools within ten (10) school days after an opening occurs.
2. All publicity and notices of such vacancies and positions shall clearly

<sup>1/</sup> While Jersey City did not treat the negotiability of the last sentence of section B, it is clear that this sentence establishes a substantive precondition for consideration for promotion and is hence non-negotiable.

set forth qualifications for and duties of the position.

3. 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.
4. Vacancies arising may be filled on a temporary basis until they can be filled in accordance with the provisions outlined above.

The first two subsections merely establish procedural requirements and do not compromise the employer's ability to establish the qualifications for promotion or the methods of selection. State v. State Supervisory Employees Assoc., supra. They are negotiable.

The third subsection closely resembles a proposed contract clause held non-negotiable in State v. State Supervisory Employees Ass'n, supra at 97. That proposal stated:

Promotional examinations must be administered within ninety (90) days of the provisional appointment of an employee.

While the Court recognized that the proposal was primarily procedural, it affirmed the Commission's holding that it was non-negotiable because it did not intimately affect employees and did involve a managerial determination. For the same reasons, the instant subsection is non-negotiable.

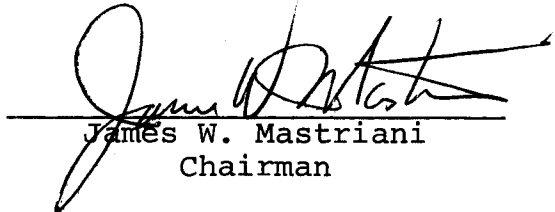
For the reasons stated in Jersey City, 7 NJPER at p. 686, the fourth subsection is not negotiable.

#### ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the following provisions of Article VII: A, C, and D.1 and 2 are within the scope of negotiations.

IT IS FURTHER ORDERED that the following provisions of Article VII: B, D3, and D4 are outside the scope of negotiations.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

With respect to Article VII A, B and D1 and 2: Chairman Mastriani Commissioners, Butch, Graves, Hipp, Hartnett and Suskin voted for this portion of the decision, none opposed.

With respect to Article VII C: Chairman Mastriani, Commissioners Hartnett, Butch, Graves and Suskin voted for this portion of the decision. Commissioner Hipp voted against this portion of the decision.

With respect to Article VII D3 and 4: Chairman Mastriani, Commissioners Hartnett, Butch, Hipp and Suskin voted for this portion of the decision. Commissioner Graves voted against this portion of the decision.

Commissioner Newbaker was not present.

DATED: Trenton, New Jersey

May 4, 1982

ISSUED: May 5, 1982