

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST AMWELL TOWNSHIP TEACHERS'
ASSOCIATION,

Petitioner,

Docket No. SN-77-18

-and-

WEST AMWELL TOWNSHIP BOARD OF
EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Association, the Commission found that a proposed contractual provision providing access to a teacher to one's personnel file and the opportunity of a teacher to fairly review complaints and/or evaluations concerning that individual's performance was a required subject for collective negotiations. The Commission also concluded that a proposal that would establish that lesson plans remain the property of a teacher at the end of the school year was a required subject for collective negotiations. The Commission, however, determined that the format of teachers' lesson plans -- whether these plans would be standardized or left to the individual judgment of each teacher -- was only a permissive subject for collective negotiations.

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Appearances:

For the Petitioner, Ruhlman and Butrym, Esquires
(Mr. Edward J. Butrym, On the Brief)

For the Respondent, Bernhard, Durst & Dilts, Esqs.
(Mr. Richard J. Durst, II, Of Counsel)

DECISION AND ORDER

On January 17, 1977, the West Amwell Township Teachers' Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute between the Association and the West Amwell Township Board of Education (the "Board") were within the scope of collective negotiations.

During the course of negotiations for a 1977-1978 collective negotiations agreement certain Association proposals, in part, relating to Association rights and privileges, teachers' work load, lesson plans for instructional purposes, sick leave provisions, extended leaves of absences, teachers' rights including access to personnel files, and a maintenance of benefits clause were deemed by the Board to relate to non-mandatory subjects of collective

negotiations. The Board refused to negotiate with regard to these particular issues.^{1/}

Shortly after the filing of the instant petition seeking certain pertinent Commission and judicial decisions relating to the issues then in dispute were forwarded to representatives of the parties for their examination. The parties were informed that an informal conference would be scheduled forthwith if the documentation submitted to the parties did not lead to a resolution of the negotiability disputes. Subsequent thereto the Commission was informed that the parties had been unable to resolve these matters themselves. Informal conferences were then held by Commission agents with representatives of the parties on October 11, 1977 and November 28, 1977 for the purpose of clarifying the issues in dispute and exploring the possibility of voluntary resolution and settlement of the dispute. In addition, the parties submitted briefs in support of their respective contentions.

After the November 28, 1977 conference the parties agreed that only two issues remained for the Commission's negotiability determinations the Association's proposal relating to lesson plans for instructional purposes and a proposal relating to both teacher review of derogatory materials concerning a teacher's conduct, character and personality and and a teacher's access to personnel records and files in general. The parties stipulated, from a negotiability standpoint, that all the other issues that were the subject of the Association's scope petition should be regarded as being resolved and withdrawn from further Commission consideration.

^{1/} The Board originally requested oral argument but has since abandoned that request in the interest of an expeditious determination.

The two Association proposals that are the subject of this decision are as follows:

VII. Teacher Responsibility

C. Instructional Planning

1. Lessons-plans shall be in a format most practical and useful to the teacher.
2. Such plans will remain the property of the individual teacher at the conclusion of the year.

* * *

XVIII. Teacher's Rights

D. No material derogatory to a teacher's conduct, service, character or personality shall be placed in his personnel file unless the teacher has had an opportunity to review the material. The Teacher shall acknowledge that he has had the opportunity to review such material by affixing his signature to the copy to be filed with the expressed understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material to be attached to the file copy.

E. Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person, which are used in any manner in evaluating a teacher shall be promptly investigated and called to the attention of the teacher. The teacher shall be given an opportunity to respond to and/or rebut such complaint, and shall have the right to be represented by the Association at any meetings or conferences regarding such complaint. If a complaint is so raised, the teacher is not to use said complaint or it being raised to the detriment of the student, parent, or other person.

F. Personnel Records

1. A teacher shall have the right, upon request, to review the content of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall have the right to have a representative of the Association accompany him during such review.
2. Although the Board agrees to protect the confidentiality of personal references, academic credentials, and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.
3. Final evaluation of a teacher upon termination of his employment shall be given prior to severance and no documents and/or other material shall be placed into the personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this Article.

With reference to the lesson plan proposal, the Association maintains that the format of lesson plans -- whether these plans will be standardized or left to the individual judgment of each teacher -- is more related to a teacher's workload and preparation time, issues that have been held to be required subjects of collective negotiations by the courts and the Commission, than it is to questions relating to course content, an issue that the Association admits is outside the scope of required negotiations. As to the lesson plans remaining the property of a teacher at the conclusion of the year, the Association submits that there exists no statutory basis for the transfer to the Board of a teacher's work product and contends that this matter is more directly related to a teacher's terms and conditions of employment than it is to the Board's managerial prerogatives.

The Association furthermore submits that its proposal relating to a teacher's access to his personnel file and right to respond to potentially negative complaints and evaluations intimately concerns a teacher's financial and personal welfare, e.g., the teacher's continued employment, and therefore is a required subject for collective negotiations. The Association cites Commission decisions that have characterized fair dismissal and evaluation procedures as minimal safeguards relating to terms and conditions of employment in support of its contentions.

The Board, in reference to the lesson plan and personnel records issues, argues that these issues are matters of "board and administrative prerogatives" which do not affect a teacher's terms

and conditions of employment.

The Commission finds after careful review of the parties' submissions, that the basic format of a teacher's lesson plans is not a required subject of collective negotiations. Decisions relating to the content and breadth of teachers' lesson plans -- format considerations -- relate predominantly to the means and methods of providing education to the students of the district and as such are not mandatory subjects of collective negotiations. The Commission concludes, however, that in the absence of any specific statutory proscriptions, nothing would preclude the parties from negotiating about this issue, i.e., it is a permissive subject of collective negotiations.

The Commission concludes that the subsection of the Association's lesson plan proposal that would establish that lesson plans remain the property of a teacher at the end of the school year is a required subject of collective negotiations. This matter directly concerns a teacher's individual work product, and one's retention of documents used in the teacher evaluation process obviously relates to a teacher's terms and conditions of employment.^{2/} The lesson plans were prepared by the teacher and may prove useful to the teacher in the future.

The next issue before the Commission relates to the negotiability of an article providing access to a teacher to his own personnel file and the opportunity of a teacher to fairly review complaints and/or evaluations concerning that individual's performance. The Commission finds that all of the subsections of this teacher's rights provision are required subjects for collective negotiations.

2/ This does not mean that the lesson plan is the exclusive property of the teacher.

These proposals all relate to a teacher's right to have adequate notice of all complaints and materials that may threaten that teacher's job security or affect that individual's ability to obtain future employment in the event that that teacher leaves the district. Therefore, it is determined that such negotiations proposals relate directly to terms and conditions of employment. No inherently managerial prerogatives are touched by these particular proposals.^{3/}

ORDER

With respect to those matters which we have hereinabove determined to be required subjects for collective negotiations, i.e., the proposals relating to a teacher's personnel files and records and the possession of lesson plans at the end of the school year, the West Amwell Township Board of Education is hereby ordered to negotiate in good faith upon demand of the West Amwell Township Teachers' Association.

With respect to that matter which we have hereinabove determined to be a permissive subject for collective negotiations, i.e., the format of teachers' lesson plans, the West Amwell Township Teachers' Association is hereby ordered to refrain from

^{3/} See In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER 303 (1977); In re Teaneck Board of Education, P.E.R.C. No. 78-3, 3 NJPER ____ (1977), appeal pending, App. Div. Docket No. A-5211-76; and In re West Orange Board of Education, P.E.R.C. No. 78-19, 3 NJPER ____ (1977). It would appear that Commissioner of Education decisions under Title 18A such as Sayreville Education v. Board of Education, 1971 S.L.D. 197 as well as the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., are fully consistent with the Commission's determination relating to the issue of access to personnel files.

insisting, to the point of impasse, upon the inclusion of such a matter in a collective negotiations agreement with the West Amwell Township Board of Education.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

DATED: Trenton, New Jersey
December 20, 1977
ISSUED: December 21, 1977