P.E.R.C. NO. 85-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KEANSBURG BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-82

KEANSBURG TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, determines the negotiability of 13 proposals made by the Keansburg Teachers Association during collective negotiations with the Keansburg Board of Education. The Chairman found one proposal (concerning safe maintenance of equipment) to be mandatorily negotiable; nine proposals (concerning field trips, initiation of discipline, class size, lesson plans, non-teaching duties, advance notice of an evaluation, classroom supplies, and use of sick leave for child rearing) not mandatorily negotiable; and three proposals (concerning disciplinary review procedures, seniority for layoffs of secretaries and clerks, and discrimination) to be not mandatorily negotiable as now worded.

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Appearances:
For the Petitioner, Bennett, Davison & Munoz, Esqs
(John Bennett, of Counsel)

For the Respondent, Oxfeld, Cohen & Blunda, Esqs.
(Mark Blunda, of Counsel)

DECISION AND ORDER

On March 28, 1984, the Keansburg Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a determination of the negotiability of 13 proposals made by the Keansburg Teachers Association ("Association") during collective negotiations with the Board.

The Board has filed a brief. The Association has not.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to apply well-settled case law to resolve these negotiability questions.

Article V(C) of the existing agreement reads: "No employee shall be reprimanded without just cause. No tenured employee shall be discharged without just cause." The Association

has proposed to modify the second sentence to read: "No employee shall be discharged without just cause."[1/]

Under a recent amendment to N.J.S.A. 34:13A-5.3, the thrust of this article -- protection against discipline without just cause -- is now clearly negotiable.[2/] This article,

1/ The Association represents a unit which consists of teaching staff members and secretaries and clerks.

2/ N.J.S.A. 34:13A-5.3, as amended, provides in part:

> In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.
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> * * *
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> Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. (Emphasis supplied).

however, is partially inconsistent with N.J.S.A. 34:13A-5.3 because it would make all such disciplinary determinations potentially subject to binding arbitration and would not provide the statutorily required exemptions from binding arbitration. Thus, under section 5.3, as amended, employees with statutory protection under the tenure laws or alternate statutory appeal procedures may not submit disputes over disciplinary determinations to binding arbitration. Therefore, it would not be proper to include this article in the successor contract. Instead, the parties may negotiate a clause consistent with N.J.S.A. 34:13A-5.3 which would make disciplinary determinations reviewable through the negotiated grievance procedures, but would exempt such determinations from binding arbitration if the affected employee had statutory protection under the tenure law or alternate statutory appeal procedures. See In re New Providence Bd. of Ed., P.E.R.C. No. 83-38, 9 NJPER 70 (¶14038 1982); In re Edison Twp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983). See also In re Willingboro Bd. of Ed., P.E.R.C. No. 83-147, 9 NJPER 356 (¶14158 1983), aff'd 193 N.J. Super. 658 (App. Div. 1984), certif. den 10/23/84.

The Association proposes the inclusion of Article VI (A)(5) of the existing agreement in the successor agreement. That section states: "All participation by teachers on field trips shall be voluntary." This clause is not mandatorily negotiable. It is akin to a proposed ban on involuntary participation in extracurricular activities which was found non-negotiable in

In re Eastampton Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983). Compensation for required participation in field trips, however, remains mandatorily negotiable. Ramapo-Indian Hills Ed. Ass'n, Inc. v. Ramapo-Indian Hills H.S. Dist. Bd. of Ed., 176 N.J. Super. 35 (App. Div. 1980).

Proposed Article V(D) states: "No employee shall be discriminated against." This clause is mandatorily negotiable with one exception: grievances alleging discrimination in the making of managerial decisions which do not involve terms and conditions of employment may not be submitted to binding arbitration. See In re Teaneck Bd. of Ed., 94 N.J. 9 (1983). The proposal should be reworded to make clear that binding arbitration is only available when discrimination with respect to terms and conditions of employment is alleged.

Proposed Article V(E) reads: "No employee will be reprimanded or disciplined in front of peers or students." Although I have trouble hypothesizing an appropriate situation for disciplining or reprimanding a teacher in front of a peer or, especially, a student, the provision does implicate management's prerogative to initiate discipline. Accordingly, I find the proposal is not mandatorily negotiable.

Proposed Article VI (A)(8) reads: "Special subject classes in Kindergarten through eighth grade shall consist of only one homeroom class per period." It appears that this proposal is an attempt to limit the class size of classes in special areas, i.e., art, music, physical education. The proposal is not

mandatorily negotiable. See, e.g., In re Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (¶14051 1983).

Proposed Article VI(A)(10) reads: "Supervision of lesson plans will be limited to nontenured teachers." This proposal is not mandatorily negotiable. In re Edison Twp. Bd. of Ed., P.E.R.C. No. 83-100, 9 NJPER 100 (¶14055 1983); In re Woodbridge Twp. Bd. of Ed., P.E.R.C. No. 81-120, 7 NJPER 238 (¶12106 1981); In re Fairview Bd. of Ed., P.E.R.C. No. 81-19, 6 NJPER 395 (¶11204 1980); In re No. Burlington Cty Reg. Bd. of Ed., P.E.R.C. No. 80-151, 6 NJPER 315 (¶11154 1980); and In re West Amwell Twp. Bd. of Ed., P.E.R.C. No. 78-31, 4 NJPER 23 (¶4012 1977).

Proposed Article VI(A)(11) reads: "Teachers will be relieved of all non-teaching duties." Teachers may negotiate a clause which would allow them to be relieved of non-teaching duties unrelated to student safety, security and control: for example, custodial functions such as washing windows, blackboards, and cleaning blinds. See, e.g., In re Byram Twp. Bd. of Ed., 52 N.J. Super. 12 (App. Div. 1977). The instant clause, however, prohibits the performance of any non-teaching duties and is not mandatorily negotiable. See In re Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-50, 9 NJPER 670 (¶14292 1983).

Proposed Article VIII(B) reads: "All employees will be given a twenty-four (24) hour advanced notice in writing for [the] purpose of an evaluation." This clause is not mandatorily negotiable. See In re Bethlehem Twp. Bd. of Ed., P.E.R.C. No.

80-5, 5 NJPER 290 (¶10159 1979), aff'd 177 N.J. Super. 479 (App. Div. 1981), aff'd 9 N.J. 38 (1982).

Proposed Article IX(2) reads: "Classes shall not exceed twenty-five (25) students per certified teacher." This clause is non-negotiable for the reasons stated in the discussion of proposed Article VI(A)(8).

The Association has proposed two additions to Article IX: (3) "All supplies, deemed necessary by the teacher, shall be provided," and (5) "All equipment in each classroom shall be maintained and in working order." Section (3) is not mandatorily negotiable, but section (5) is. A clause similar to section (3) was found not mandatorily negotiable in In re Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). Section (5) is akin to other proposals by public employees to have the "tools of their trade" maintained in safe and operable condition. See, e.g., In re Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER 192 (¶4097 1978). It is mandatorily negotiable.

The Board challenges the negotiability of the underlined word in the following proposal: "X(2) - Employees using their sick leave for maternity/paternity purposes shall not be penalized." The Appellate Division in In re Hackensack Bd. of Ed., 184 N.J. Super. 31, certif. den. 91 N.J. 217 (1982) prohibited the use of sick leave for child rearing purposes. Child rearing leaves, however, remain mandatorily negotiable so long as the agreement does not require employees to use sick leave days for such purposes.

Proposed Article XVII(C) reads: "All riffed employees will be rehired according to seniority on a permanent basis." With respect to teaching staff members, the proposal is non-negotiable because it is preempted by various provisions of the education laws. See N.J.S.A. 18A:28-12 and N.J.A.C. 6:3-1.10. See also, Maywood Ed. Ass'n v. Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). However, with respect to the secretaries and clerks there does not appear to be a statute or regulation mandating recall in a particular order. Since seniority as it relates to layoffs and recall is generally a mandatorily negotiable subject, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), I find the clause is not preempted insofar as secretaries and clerks are concerned. However, the Board also objects that the word "permanent" connotes an impermissible guarantee against future layoffs of previously riffed employees who have been recalled. I agree. Accordingly, the clause, as now worded, is not mandatorily negotiable.

ORDER

A. The following proposal is mandatorily negotiable: Article IX(5).

B. The following proposals are not mandatorily negotiable: Article VI(A)(5); Article V(E); Article VI(A)(8); Article VI(A)(10); Article VI(A)(11); Article VIII(B); Article IX(2); Article IX(3); Article X(2).

The following proposals are not mandatorily negotiable as now worded: Article V(C), Article V(D) and Article XVII(C).

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: Trenton, New Jersey
November 14, 1984