

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUNTERDON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-131

NORTH HUNTERDON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several proposals made by the North Hunterdon Education Association to the North Hunterdon Board of Education during contract negotiations. The Commission finds the following to be mandatorily negotiable: procedural aspects of the evaluation process and advisory statements concerning the purpose of evaluations; access to an employee's personnel file; protection from discipline without cause for those employees without statutory protection under the tenure laws or alternate statutory appeal procedures; statement that employee's personal life not an appropriate concern of the Board except to the extent that it may affect the performance of his duties; relieving teachers of collection duty for outside vendors; non-binding statement of purpose concerning the hiring of aides; and that any reduction in force will be in accordance with state statutes and judicial decisions. The Commission finds the following to be not mandatorily negotiable: substantive aspects of teacher evaluations; academic freedom guarantees; class size and the allocation of class space and qualifications for Home Teaching and Summer Employment.

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Apearances:

For the Petitioner, Murray & Granello, Esqs.
(James P. Granello, of Counsel, Barton L. Knapp, On the
Brief)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, Of Counsel and On the Brief)

DECISION AND ORDER

On June 18, 1984 the North Hunterdon Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a determination that several clauses in its most recent contract with the North Hunterdon Education Association ("Association") are not mandatorily negotiable. The Board filed its petition while the parties were engaged in negotiations for a successor agreement. The parties have filed briefs and documents.

The Board asserts that all or part of eight articles in the agreement are not mandatorily negotiable. The text of the disputed articles appears in an appendix to this decision.

In IFPTE, Local 195 v. State, 88 N.J.383 (1982) ("Local 195"), the Supreme Court set forth the tests for determining whether

a subject is mandatorily negotiable and arbitrable. The Court stated:

...a subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. Id. at 404-405.

Article VIII of the contract concerns evaluations. The Board contends that this article covers matters of educational policy and/or is preempted by portions of the New Jersey Administrative Code covering tenured (N.J.A.C. 6:3-1.21) and non-tenured (N.J.A.C. 6:3-1.19) teaching staff. The Association asserts that the language either mimics or paraphrases provisions of the administrative code and thus may be included within the parties' agreement.

We have reviewed the entire article and compared its provisions with the cited portions of the administrative code. We find nothing in the article which is inconsistent with the code. However, some sections of Article VIII (specifically B, C, and D3) are nevertheless non-negotiable because they involve matters of managerial prerogative without reference to Local 195's preemption

test. The remaining sections of the article are mandatorily negotiable. They are either procedural (D1 and 2 and E) or general advisory statements concerning the purpose of evaluations (A).

Article IX C provides that material placed in an employee's personnel file shall be signed by the employee or by a school principal and the Association's president if the employee refuses to sign the document. The article also restricts use of the document if this procedure is not followed. We have held that provisions concerning an employee's right to know the contents of his personnel file are mandatorily negotiable. See In re West Amwell Township Bd. of Ed. P.E.R.C. No. 78-31, 4 NJPER 23 (Para 4012, 1977). The instant provision is not significantly different and is mandatorily negotiable.

Article X E provides that "No employee shall be disciplined, reprimanded, reduced in rank or compensation without just cause." This language is mandatorily negotiable provided language is added reflecting section 5.3's exclusion from binding arbitration of disciplinary disputes involving employees with statutory protection under the tenure laws or alternate statutory appeal procedures. See N.J.S.A. 34:13A-5.3, CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984), In re Edison Tp. Bd. of Ed. P.E.R.C. No. 83-100, 9 NJPER 100 (para 14053 1983), and In re New Providence Bd. of Ed. P.E.R.C. No. 83-88, 9 NJPER 14038, 1983).

Article XIII A, concerning employees' personal lives, directly affects the personal welfare of employees and generally does not concern educational policy. The article, however, recognizes that in some instances an employee's personal life may affect the performance of his or her duties. See, e.g., In re Grossman, 127 N.J. Super. 13 (App. Div. 1974). Given this recognition, which protects the employer's right to evaluate employee performance, this article is mandatorily negotiable.

Article XIII C recognizes the teachers' interest in academic freedom and acknowledges the need to protect teachers from censorship and restraints. Academic freedom directly affects teacher work and welfare and restrictions on academic freedom can implicate constitutional rights. See Riverdell Ed. Ass'n. v. Riverdell Bd. of Ed., 122 N.J. Super. 350 (L. Div. 1973). On balance, however, provisions guaranteeing academic freedom are matters of major educational policy and are not mandatorily negotiable. Rutgers University, P.E.R.C. No. 84-44, 9 NJPER 661 (Para. 14286 1983).

Article XV concerns class size and the allocation of class space. It is not mandatorily negotiable. See In re College of Medicine and Dentistry, P.E.R.C. No. 81-113, 7 NJPER 228 (Para 12099, 1981). We disagree with the Association's assertion that the clause is merely an advisory statement of purpose and note that the last sentence of section A implies that the clause would hinder the flexibility of class size determinations when team teaching or large group instruction is not involved. If a clause is to be considered merely advisory, it should say so unequivocally.

The Board contends Article XVIA (relieving teachers of collecting for outside vendors) is not mandatorily negotiable because it involves only a small amount of work. The Board does not state how relieving teachers of collections would significantly interfere with educational policy other than to compare the tasks with other non-teaching duties (e.g. bus duty) related to student safety.^{1/} Since the issue involves an increase in teacher workload by imposing housekeeping duties and does not impede any identifiable educational policy, it is mandatorily negotiable. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25-26 (App. Div. 1977).

Article XVI B regarding the hiring of aides does not remove from the Board any preorgatives regarding the type and number of employees it wishes to hire. The language is a non-binding statement of purpose and is mandatorily negotiable. See In re Mahwah Bd. of Ed., P.E.R.C. No. 83-96, 9 NJPER 94 (Para 14051, 1983).

Article XIX A merely recites that any reduction in force will be in accordance with state statutes and judicial decisions. The Board retains complete power to decide when reductions in force will be made. However, once that decision is made, the Board may contractually obligate itself to follow statutory and regulatory procedures and seniority requirements in implementing these reductions. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 84 (1978).

^{1/} The fact that one of the outside vendors identified in the article would sell insurance does not make the issue one of student safety.

The language of Article XX B has often been construed and held not mandatorily negotiable. See In re Byram, supra., 152 N.J. Super. at 27 and N. Bergen Tp Bd. of Ed. v. N. Bergen Fed. Teachers, 141, N.J. Super. 97 (App. Div. 1977).

ORDER

The following articles are mandatorily negotiable: VIII A, D1, D2, E; IX C; X E, to the extent consistent with this opinion; XIII A; XVI A and B; XIX A.

The following articles are not mandatorily negotiable: VIII B, C and D 3; XIII C; XVA and B; XXB.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Wenzler and Suskin voted in favor of this decision. None opposed. However, Commissioner Graves dissented from those portions of the order which found items to be non-negotiable. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985

APPENDIX

ARTICLE VIII

EVALUATION

The Board and the Association recognize that:

- A. Evaluation can be useful as an aid for:
 - 1. Improving employee performance.
 - 2. Retention, guidance, and promotion of staff members.
 - 3. Self-improvement.
 - 4. Administrator-staff rapport.
- B. Our functional evaluative program presupposes qualified evaluators who shall use evaluative criteria to be developed in accordance with state guidelines.
- C. Evaluation must be diagnostic. It must build personal and professional self-respect and self-image. It must focus on the situation. It must encourage expression, creativity, variation, and development of technical and professional skills.
- D. The person being evaluated shall have full knowledge of the procedures, the qualifications of the evaluator and the findings thereof.
 - 1. Every nontenured teaching staff member shall be evaluated as per New Jersey Title 18A.

2. Tenured teaching staff members will be evaluated in accordance with N.J.A.C. 6:3-1.21, the Tenure Teacher Evaluation Act.
3. Teaching staff members shall be evaluated by persons certified by the State of New Jersey to supervise instruction.

E. Procedure:

1. Authorized evaluators will use special evaluation forms for submitting specified numbers of evaluations at designated times.
2. Teaching staff members will be evaluated in accordance with New Jersey statutory requirements.

ARTICLE IX

PERSONNEL FILES

- C. All materials placed in an employee's personnel file shall be signed by that employee, duplicated, and given to him for his own disposition with the express understanding that his signature in no way indicates agreement with the content thereof. Any material that the employee sees and refuses to sign may be co-signed by the principal and the President of the Association to indicate that they witnessed the reading of the material

by the employee in question. Any material not signed by the employee and duplicated may not be used in the grievance or evaluation procedure. However, material co-signed by the principal and the President of the Association indicating that the employee has seen the material may be used in the grievance or evaluative procedure.

ARTICLE X

PERSONNEL EMPLOYMENT

- E. No employee shall be disciplined, reprimanded, or reduced in rank or compensation without just cause.

ARTICLE XIII

PERSONAL AND ACADEMIC FREEDOM

- A. The personal life of an employee is not an appropriate concern or attention of the Board except as it may directly prevent the employee from properly performing assigned professional functions.
- C. The Board recognizes that academic freedom is essential to the fulfillment of the purposes of the North Hunterdon Regional High School District, and acknowledges the fundamental need to protect employees from any censorship or restraint which might interfere with their

obligation to pursue true in the performance of their teaching functions.

ARTICLE XV

CLASS SIZE

- A. The Board recognizes that the maximum class size should be consistent with the available facilities and resources of the school system and community. The Board recognizes the class size recommendations of the State Department of Education and takes them into consideration in its planning. This shall not be construed in such a way as to hinder the flexibility of the School District in establishing class size involving team teaching, large group instruction, etc.
- B. Marginal classrooms should be used only under extreme emergencies.

ARTICLE XVI

NONPROFESSIONAL DUTIES

- A. Employees shall not normally be required to make collections for outside vendors of pictures, insurance and so forth.
- B. The Board not only recognizes the desirability of

employing aides to perform certain duties under the direction of the employee or employees to whom they are assigned, but also that the decision of hiring and stipulating of the assignments rests with the Board. Such aides will be hired when practical.

ARTICLE XIX

SENIORITY

A. Teaching Staff:

Any reduction in force of the teaching staff shall be conducted in accordance with state statutes and judicial decisions.

ARTICLE XX

HOME TEACHING AND SUMMER EMPLOYMENT

- B. In filling such positions, the Board shall consider the professional qualifications, background attainments, and other relevant factors, including all applicants' service in the District. Persons employed in the North Hunterdon Regional High School District shall have priority for such assignments. Appointment will be at the discretion of the Board.