



CASE LAW AFFECTING NEGOTIATIONS

Listed below are a number of court and PERC decisions which affect school district negotiations.¹

The Board's Negotiating Team

Bergenfield Board of Education and Bergenfield Education Association, PERC No. 90, 1 *NJPER* 44. Unless otherwise noted, a board's negotiating team can bind the entire board to a tentative agreement.

Lower Township Board of Education and Lower Township Elementary Teachers' Association, PERC No. 78-32, 4 *NJPER* 4013. Members of the board's negotiating team who sign a memorandum of agreement are obligated to recommend its acceptance to the full board.

School Ethics Commission Advisory Opinions A series of opinions, interpreting *N.J.S.A. 18A:12-21 et seq.* (The School Ethics Act), advise board members and administrators who have a conflict of interest to refrain from participating in discussions and votes on collective bargaining agreements. Please consult the "Labor Relations Summary: Impact of the School Ethics Act on Negotiations" later in this section of *The Negotiations Advisor* for a full discussion of what constitutes a conflict of interest under the School Ethics Act.

Board-Union Relationship

Bridgewater Township v. Bridgewater Public Works Assn., 95 *N.J.* 235 (1984). In allegations of anti-union motivation, the union must establish a *prima facie* case that protected activity was a motivating factor in the employer determination. The burden then shifts to the employer, who must demonstrate that the action was based on legitimate business justification and would have occurred in the absence of protected activity. If the employer successfully meets its burden of proof, charges will be dismissed.

Black Horse Pike Regional Board of Education and Black Horse Pike Regional Education Association, PERC No. 82-19, 7 *NJPER* 12223. A board of education has the right to criticize unions and/or their representatives for conduct believed to be detrimental to good labor

relations; however, such criticism cannot be used to take adverse action against the individual as an employee, as union conduct is unrelated to professional performance.

Duty to Bargain in Good Faith

Galloway Township Board of Education v. Galloway Township Education Association, 78 *N.J.* 25 (1978). The duty to negotiate changes in terms and conditions of employment exists during the life of an agreement.

State v. N.J. Council of State College Locals, 141 *N.J. Super.* 470 (App. Div. 1976). The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party.

Waiver/Suspension of Duty to Bargain:

Caldwell-West Caldwell Education Association v. Caldwell-West Caldwell Board of Education, 180 *N.J. Super.* 440 (App. Div. 1980). Certain minor, nonrecurrent types of work load increases which do not lengthen the negotiated workday and which stem directly from an educational policy decision are nonnegotiable.

County of Middlesex (Roosevelt Hospital) and Communication Workers, Local 1065 and Roosevelt Hospital Association Inc., PERC No. 81-129, 7 *NJPER* 12118. A public employer must suspend bargaining with the majority representative during the pendency of a bonafide representation dispute.

New Jersey Institute of Technology and Newark College of Engineering Professional Staff Association, PERC No. 80-27, 5 *NJPER* 10202. Where increases in work load are "inescapably intertwined with and inseparable from" an educational policy decision, negotiations over the increased work load are not required.

Rutgers, The State University and AFSCME, Council 52 and Local 1761, PERC No. 80-26, 5 *NJPER* 10201. Clear contract language can constitute a waiver by the union of its right to negotiate change in working hours.

Woodstown-Pilesgrove Regional High School District Board of Education v. Woodstown-Pilesgrove

¹PERC or the courts can alter case law at any time. Before relying on these decisions, please check to determine if they have been modified since the publication of this book. In addition, please keep in mind that this list is far from exhaustive and represents only a few decisions affecting selected bargaining issues. Other decisions can be found in specific articles and in the analyses of sample agreements of *The Negotiations Advisor*.

Regional Education Association, 81 *N.J.* 582 (1980). The effect of a management decision on terms and conditions of employment is not automatically negotiable, but depends upon whether the dominant issue primarily involves either an educational policy decision or a term and condition of employment.

Employer Conduct During Impasse

Galloway Township Board of Education and Galloway Township Education Association, 78 *N.J.* 25. A public employer may not refuse to pay automatic increments contained in an expired agreement while negotiations are continuing for a successor agreement; however, see Neptune, below.

Neptune Township Board of Education, 144 *N.J.* 16 (1996). School law prohibits boards of education from paying increments to teaching staff members upon the expiration of a three-year negotiated agreement. **Middletown Township Board of Education**, PERC No. 99-72, 25 *NJPER* 30053. PERC holds that this prohibition applies to the payment of new longevity increments based on additional years of experience, and to increments resulting from horizontal movement on columns of the guide due to the attainment of additional educational experience, after the expiration of the three-year agreement. **East Hanover Board of Education**, PERC No. 99-71, 25 *NJPER* 30052 (aff'd, App. Div. Docket No. A-4226-98T3, April 10, 2000), holds that labor law requires that Neptune's prohibition must be extended to noncertificated employees who are included in the teachers' bargaining unit and who are covered by the same three-year contract.

Piscataway Township Board of Education and Piscataway Township Education Association, PERC No. 91, 1 *NJPER* 49. A public employer may not alter the status quo of an expired contract while still negotiating a successor contract.

Rutgers, The State University and AFSCME Council 52, Local 1761, PERC No. 88-1, 13 *NJPER* 18235. A subsequent agreement and retroactive payment can render moot unfair practice charges filed against the employer for its failure to pay increments after the contract's expiration.

Scope of Grievability

Teaneck Board of Education v. Teaneck Teachers Association, 94 *N.J.* 9 (1983). Claims of racial discrimination in public employment may not proceed to binding arbitration; claims may proceed to advisory arbitration and to the Division of Civil Rights.

Township of West Windsor v. Public Employment Relations Commission and P.B.A. Local 130, 78 *N.J.* 98 (1978). The terms of all negotiated grievance procedures must "cover" grievances concerning the

interpretation, application, or violation of policies, agreements, and administrative decisions affecting terms and conditions of employment.

Scope of Negotiations Defined

Paterson Police P.B.A. Local No. 1 v. City of Paterson, 87 *N.J.* 78 (1981). Even though a permissive category of negotiations for police and firefighters is constitutional, this category is narrowly restricted so as to preclude negotiations on matters which place "substantial limitations" on the governmental body's policy-making authority.

Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 *N.J.* 144 (1978). C. 123 did not create a permissive category. Transfers, for example, are nonnegotiable.

Local 195, IFPTE, AFL-CIO v. State of New Jersey, 88 *N.J.* 393 (1982). To be negotiable, a topic (1) must intimately and directly affect the work and welfare of employees; (2) must not be preempted by statute; and (3) must not significantly interfere with the determination of governmental policy.

State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195 IFPTE and Local 518 SEIU, 78 *N.J.* 54 (1978). General statutes giving authority to employers do not render negotiations over terms and conditions illegal. Specific statutes and regulations that govern terms and conditions of employment cannot be abrogated by contract.

Township of Mount Laurel and Mount Laurel Township Police Officers Association, 215 *N.J. Super.* 108 (1987). Test of negotiability must be applied on a case-by-case basis.

Scope of Negotiations Determinations

Listed below are selected cases determining the negotiability of various issues. For a far more inclusive listing of negotiability decisions, including more PERC rulings, please consult "A Guide to Negotiability" in this section of *The Negotiations Advisor*.

Assignments:

Byram Township Board of Education v. Byram Township Education Association, 152 *N.J. Super.* 12 (1977). Assignments to noninstructional duties which relate to student safety, security, and control are non-negotiable; however, noninstructional assignments which do not affect students and do not implicate teachers' primary functions are negotiable.

Carteret Education Association v. Carteret Board of Education, Docket No. A-419-79, unpublished App. Div. opinion, decided November 10, 1980. The decision

to assign teachers to after-school workshops that do not involve student supervision is a mandatorily negotiable term and condition of employment.

Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County, 150 *N.J. Super.* 262, affirmed, 73 *N.J.* 461 (1977). Assignment of teachers to lunchroom supervision is an educational policy decision and is nonnegotiable.

Ramsey Board of Education, PERC No. 85-119, 11 *NJPER* 16133, affirmed, unpublished App. Div. Docket No. A-4836-84T1, decided February 6, 1986. The number of teaching preparations assigned to teachers is generally a work load issue and therefore mandatorily negotiable.

Calendar:

Burlington County College Faculty Association v. Burlington County College, 64 *N.J.* 101 (1973). The establishment of the school calendar is a nonnegotiable management decision.

Piscataway Township Education Association v. Piscataway Township Board of Education, App. Div. Docket No. A-7215-95T2, January 14, 1998, cert. den. ___ *N.J.* ___, 1998. The decision to modify the school calendar is not negotiable; however, the negotiability of the impact of that decision must be determined by PERC on a case-by-case basis, based on the balancing test enunciated in *Woodstown-Pilesgrove*, 81 *N.J.* 582 (1980).

Discipline:

For a full listing of recent decisions defining discipline of school employees, please see the article "Case Law Defining Discipline" in the Selected Topics section of *The Negotiations Advisor*.

East Brunswick Board of Education v. East Brunswick Education Association, PERC No. 84-149, 10 *NJPER* 15192, aff'd. App. Div. Docket No. A-5596-83T6, March 19, 1985, cert. den. 101 *N.J.* 280 (1985). Withholding of increments for nonteaching staff members are disciplinary determinations which may proceed to binding arbitration, as these employees have no alternate statutory appeal procedures.

Holland Township Board of Education v. Holland Township Education Association, PERC No. 87-43, 12 *NJPER* 17316. Affirmed, Docket No. A-2053-86T8, unpublished App. Div. opinion decided October 23, 1987. In reviewing the arbitrability of disciplinary disputes involving teaching staff members, PERC will determine, based upon the specific facts of each case, whether the dispute predominantly involves an evaluation of teaching performance or a disciplinary sanction. Only those cases involving disciplinary actions will be permitted to proceed to binding arbitration.

Scotch Plains-Fanwood Board of Education, PERC No. 91-67, 17 *NJPER* 22057. In accordance with *N.J.S.A.* 34: 13A-26, PERC will apply the *Holland Township* balancing test (see above) to determine the appropriate legal forum of appealing challenged increment withholdings of teaching staff members: increments withheld for predominately disciplinary reasons may proceed to binding arbitration; withholdings based predominately on evaluations of teaching performance may not proceed to binding arbitration but can be appealed to the Commissioner of Education.

Wayne Township Board of Education, App. Div. Docket No. A-2749-97T5, decided Jan. 19, 1999, cert. den. 3/31/99. When a contract does not extend contractual tenure to employees who are not eligible for statutory tenure, the decision to not renew a fixed-term contract does not constitute discipline. Also see **Marlboro Township Board of Education**, 299 *N.J. Super.* 283 (1997), cert. den. 151 *N.J.* 71 (1997).

Evaluations:

Bethlehem Township Board of Education v. Bethlehem Township Education Association, 91 *N.J.* 38 (1982). Tenured teacher evaluation procedures are negotiable as long as contracts do not conflict with State Board of Education rules. Related educational policy questions are nonnegotiable.

County of Essex and AFSCME, Council 52, Local 1247, AFL-CIO, PERC No. 86-149, 12 *NJPER* 17201, aff'd. App. Div. Docket No. A-5803-85T7, June 30, 1987. Evaluation criteria used to award merit pay are negotiable.

Hazlet Township Board of Education v. Hazlet Township Teachers Association and Public Employment Relations Commission, Docket No. A-2875-78, unpublished App. Div. opinion, decided March 27, 1980. The application of evaluation criteria is not negotiable or arbitrable.

Teaneck Board of Education v. Teaneck Teachers Association, 161 *N.J. Super.* 75 (App. Div. 1978). Criteria for evaluation and the content of evaluations cannot be negotiated.

Pregnancy-Related Disability Leaves and Sick Leave Benefits During Child Care Leaves:

Board of Education of Cinnaminson v. Silver, 1976 *S.L.D.* 738, aff'd State Board 1979 *S.L.D.* 817. Employees are entitled to use their accumulated sick leave because of pregnancy-related disability.

Castellano v. Linden Board of Education, 158 *N.J. Super.* 350, affirmed as modified, 79 *N.J.* 407 (1979). Employers may neither deny employees with pregnancy-related disabilities the right to use accumulated sick leave nor establish a mandatory leave policy for pregnant teachers.

Dyson v. Montvale Board of Education, 1980 *S.L.D.* 833 affirmed, State Board 1981 *S.L.D.* 1420, affirmed, Docket No. A-3182-80T1, unpublished App. Div., decided February 8, 1982. A board may place an employee anticipating a disability leave on an involuntary unpaid leave prior to the disability period in order to protect educational continuity and avoid midsemester staffing changes, but the employee will remain entitled to sick leave pay for the period of actual disability.

Gilchrist v. Board of Education of Haddonfield, 155 *N.J. Super.* 358 (App. Div. 1976). Nonrenewal of nontenured pregnant teachers based on board policy minimizing classroom instruction interruptions is not discriminatory.

Hackensack Board of Education v. Hackensack Education Association, 184 *N.J. Super.* 311 (App. Div. 1982). According to the statutory provision on sick leave, sick leave may not be used for child rearing purposes by a nondisabled employee.

Logandro v. Cinnaminson Township Board of Education, 1979 *S.L.D.* 378, affirmed in part, State Board 1980 *S.L.D.* 1511 (June 27); **Headley v. Board of Education of the Township of Jefferson**, 1981 *S.L.D.* 1433, affirmed Docket No. A-2804-80, unpublished App. Div. opinion, decided Nov. 17, 1981. An employee who takes a voluntary leave of absence prior to his or her period of actual disability is not entitled to use sick leave during the period of actual disability.

Reduction in Force:

Cinnaminson Township Board of Education v. Cinnaminson Teachers' Association, affirmed in part, Docket No. A-2682-77, unpublished App. Div. opinion, decided June 1, 1979, cert. denied 81 *N.J.* 341 (1979). The decision to RIF, and the incidental "impact," are nonnegotiable.

Englewood Board of Education v. Englewood Teachers' Association, 150 *N.J. Super.* 265 (App. Div. 1977). The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.

Maywood Board of Education v. Maywood Education Association, 168 *N.J. Super.* 45, cert. denied 81 *N.J.* 292 (1979). Impact of a RIF on the work load of remaining employees is nonnegotiable.

Rahway Board of Education, PERC No. 88-29, 13 *NJPER* 18286. While the decision to RIF is nonnegotiable, compensation for a resulting increase on the number of instructional periods for remaining staff is negotiable.

Township of Old Bridge Board of Education, 193 *N.J. Super.* 182 (App. Div. 1984), affirmed 98 *N.J.* 523 (1985). Although RIF notice provisions are negotiable and arbitrable, such negotiated provisions may not prevent boards of education from reducing their work force as provided under *N.J.S.A.* 18A:28-9.

Sick Leave, Personal Leave, and Retirement:

Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers' Pension and Annuity Fund, Division of Pensions, Department of Treasury, State of New Jersey, 161 *N.J. Super.* 67, affirmed, 79 *N.J.* 574 (1979). Retirement incentive plans are illegal.

Hunterdon Central High School Board of Education v. The Hunterdon Central Regional High School Teachers' Association, 86 *N.J.* 43 (1981). Payment for religious observance without charging the leave to general personal leave or vacation time is unconstitutional.

Maywood Education Association v. Maywood Board of Education, 131 *N.J. Super.* 551 (1974). Payment for unused sick leave is a legally negotiable benefit.

Piscataway Township Board of Education v. Piscataway Maintenance and Custodial Association, 152 *N.J. Super.* 235 (App. Div. 1977); **Ramsey Teachers Association v. Board of Education of the Borough of Ramsey**, Docket No. A-1696-78 and A-1866-78, unpublished App. Div. opinion, decided May 30, 1980. Blanket, extended sick leave contract clauses are illegal and unenforceable.

Piscataway Township Board of Education and Piscataway Education Association, PERC No. 82-64, 8 *NJPER* 13039. The establishment of a policy enabling the board to verify illness for which sick leave is claimed is not negotiable or arbitrable. However, the application of the policy may be subject to the contractual grievance procedure.

Subcontracting:

Local 195, IFPTE, AFL-CIO v. State of New Jersey, 176 *N.J. Super.* 85 (App. Div. 1980), affirmed in part, 88 *N.J.* 393 (1982). Subcontracting unit work to an outside contractor is not a required topic for negotiations.

Ridgewood Board of Education, PERC No. 93-81, 19 *NJPER* 24098, aff'd. App. Div., April 4, 1994, cert. den. 137 *N.J.* 312 (1994). An existing contract cannot preclude a board from subcontracting unit work during the life of a negotiated agreement.

Rutgers, The State University v. AFSCME, Council 52 and its Affiliate, Local Union No. 1761, Docket No. A-468-81T1, unpublished App. Div. decision, decided May 18, 1983. Shifting unit work from employees within the unit to other employees outside the unit is distinguishable from subcontracting and is a mandatory topic of negotiations.

Tenure:

Old Bridge Board of Education, Commissioner of Education, 93: Aug. 4. When a negotiated agreement grants tenure to a custodian previously hired on a fixed-term contract, the custodian obtains an indefinite appoint-

ment which triggers operation of the School Tenure Act, notwithstanding the fact that tenure was contractually granted.

Claude Wright, Jr. v. East Orange Board of Education, 194 *N.J. Super.* 181 (1984), affirmed 99 *N.J.* 112 (1985). Tenure for school custodians, hired for a fixed term, is mandatorily negotiable. A contract clause granting tenure after three years is enforceable despite fixed-term contract.

Work Load and Work Year:

Melvin Sanders v. East Orange Board of Education, unpublished App. Div. opinion, Docket No. A-3907-81T3, decided October 5, 1983. Where reasons for a department reorganization, which results in a decreased work year, are independent of the board's desire to reduce an employee's work year, said reduction is a nonnegotiable managerial prerogative.

Newark Board of Education v. Newark Teachers' Union, Local 481, A.F.T., AFL-CIO, Docket No. A-2060-78, unpublished App. Div. opinion, decided Feb. 26, 1980. Change in preparation periods constitutes a change in work load and is, therefore, mandatorily negotiable.

Piscataway Township Board of Education v. Piscataway Township Principals' Association, 164 *N.J. Super.* 98 (App. Div. 1978). The decision to reduce the work year from 12 months to 10 months is a required topic of negotiations.

(Also see Assignment and RIF sections.)

Unit Determination

Board of Education of West Orange v. Wilton, 57 *N.J.* 404 (1971). Appropriate bargaining units must be marked by a clear and discernible community of interest which is not threatened by a substantial actual, or potential, conflict of interest. A conflict of interest which is *de minimis* may be tolerable in certain circumstances.

Bordentown Regional Board of Education and Bordentown Regional Education Association, PERC No. 84-126, 10 *NJPER* 15136, aff'd. App. Div. Dkt. No. A-4503-83T6, April 9, 1985. When petitions are filed in a timely manner, merger of existing bargaining units of nonsupervisory school employees will be permitted to avoid proliferation of bargaining units.

Cinnaminson Township Board of Education and Cinnaminson Township Teachers' Association, D.R. No. 81-39, 7 *NJPER* 12122. Department heads may be excluded from a teachers' bargaining unit when the board adopts a new job description which places department heads in a supervisory capacity over teachers.

Edison Township Board of Education, D.R. No. 82-8, 7 *NJPER* 12248; **North Bergen Board of Education**, D.R. No. 84-8, 9 *NJPER* 14263, etc. An all supervisory unit, which contains evaluators of other unit members, is appropriate when no substantial actual or potential conflict of interest exists.

Jefferson Township Board of Education and Local 866, Brotherhood of Teamsters and AFSCME, PERC No. 61 (1971); **Passaic County Technical and Vocational High School and Passaic County Technical and Vocational High School Shop Teachers Association and Passaic County Technical and Vocational Educational Association**, PERC No. 87-73, 13 *NJPER* 18026. Severance of one classification of employees from an existing unit will only be permitted if it is demonstrated that an unstable relationship exists within the unit and that the majority representative has consistently failed to provide responsible representation.

Piscataway Township Board of Education and Piscataway Township Education Association, PERC No. 84-124, 10 *NJPER* 15134. Teachers and support staff share a community of interest, and in disputed cases, separate units should generally be given the opportunity to vote on merger into a single unit.

Ramapo-Indian Hills Regional Board of Education and Ramapo-Indian Hills Education Association, D.R. No. 81-26, 7 *NJPER* 12048. Department heads who are declared supervisors under the Act may be excluded from teachers' bargaining unit.

Work Stoppage

Union Beach Board of Education v. New Jersey Education Association, 53 *N.J.* 29 (1968). School employees do not have the right to strike. Action by teachers and union in resigning and imposing sanctions against school board was a concerted action to an illegal end.

Passaic Township Board of Education v. Education Association, 222 *N.J. Super.* 298 (1987). Fact that board obtained substitutes for striking school employees, and that teachers provided lesson plans and offered to make up time, did not convert illegal public employee strike into a legal action. The court affirms docking of pay for days not worked and an order that the Association reimburse the Board for all of the expenses incurred as a result of the illegal strike. However, where contempt proceedings were not held, the court vacates fines imposed on each school employee who failed to report to work following the court order, and fines of two days' gross pay for each absence after the first day.