

I.R. NO. 88-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-61

JERSEY CITY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission designee temporarily restrains arbitration of a grievance pending a final decision on the negotiability issue by the Commission. The grievance concerns a contract provision which provides criteria for filling employment vacancies and the selection of personnel for promotions. The Board argued that the contract provision intrudes upon the Board's managerial prerogatives regarding setting employment criteria and selection of personnel for promotions. Because the case law provides that these topics are within the employer's managerial prerogatives, it appears that they are non-negotiable and non-arbitrable. Accordingly, the arbitration was temporarily restrained.

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Appearances:

For the Petitioner
DeMaria, Ellis & Hunt, Esqs.
(Brian N. Flynn, of counsel)

For the Respondent
Feintuch & Porwich, Esqs.
(Philip Feintuch, of counsel)

DECISION

The Jersey City Board of Education ("Board") filed a Petition for Scope of Negotiations Determination on February 29, 1988, with the Public Employment Relations Commission ("Commission") seeking a determination that Article 25-4 of the collective negotiations agreement between the Board and the Jersey City Education Association ("Association") is non-negotiable and non-arbitrable. With the Petition, the Board also submitted an Order to Show Cause seeking to restrain the scheduled arbitration of a grievance alleging a violation of Article 25-4 of the

agreement.^{1/} The arbitration is scheduled for March 10, 1988. N.J.A.C. 19:13-3.10. The Order to Show Cause was executed on March 2, 1988 and made returnable on March 8, 1988. On that date, I conducted a Show Cause hearing, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

The Board contends that Article 25-4 of the parties' 1986-88 collective negotiations agreement impermissibly sets mandatory criteria for the hiring of head coaches. The Board argues

^{1/} Article 25-4 provides: When a vacancy occurs in any Head Coaching position, appointment shall be given to an assistant coach active in that particular sport, based on seniority, experience and evaluation reports within the system.

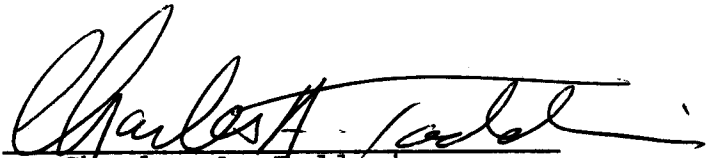
^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975). See also Englewood Bd. of Ed. v. Englewood Teachers Assn., 135 N.J. Super 120, 1 NJPER 34 (App. Div. 1975).

that such criteria intrude upon the Board's managerial prerogatives regarding hiring decisions and filling of vacancies. The Association argues that Article 25-4 does not impinge upon the Board's managerial prerogatives and is negotiable and arbitrable.

The courts and the Commission have considered the negotiability of criteria for filling employment vacancies and decisions to hire/promote personnel. The caselaw provides that an employer has a non-negotiable managerial prerogative to set criteria for hiring and promotions. Bd. of Ed. of Tp. of North Bergen v. North Bergen Fed. of Teachers, 141 N.J. Super 97 (App. Div. 1976); Teaneck Bd. of Ed. v. Teaneck Teachers Assn., 94 N.J. 9 (1983); Sayreville Bd. of Ed., P.E.R.C. No. 87-106, 13 NJPER 264 (¶18108 1987); and Pascack Valley Reg. Bd. of Ed., P.E.R.C. No. 77-55, 3 NJPER 114 (1977).

The grievance in this matter concerns employment criteria and the selection of candidates for hire/promotion for a coaching vacancy. Since criteria for filling employment vacancies and hire/promotion decisions are managerial prerogatives, it appears that the Board has met the standards required for securing interim relief in such matters. Accordingly, I hereby grant the Board's request for a temporary restraint of the arbitration scheduled in this matter and ORDER that the arbitration in the instant grievance is restrained pending a final determination of the Board's scope of negotiations petition by the full Commission.

Accordingly, the arbitration scheduled for March 10, 1988, in the above-referred grievance is restrained pending a final determination by the Commission of the instant Petition for Scope of Negotiations.



Charles A. Tadduni
Commission Designee

DATED: March 9, 1988
Trenton, New Jersey