

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW MILFORD BOARD OF EDUCATION,  
Petitioner,

Docket No. SN-76-43

-and-

NEW MILFORD EDUCATION ASSOCIATION,  
Respondent.

SYNOPSIS

In a decision and order on motion the Commission denies the Association's motion for reconsideration of the Commission's earlier decision and order in a scope proceeding. The Commission had determined that a dispute, concerning the negotiability of two issues relating to the accuracy of marginal ratings received by a teacher in two categories in the evaluation report of her performance made by her building principal, was governed by Chapter 303, Public Laws of 1968 in light of the fact that the contract provision in dispute was contained in a contract covering the period from July 1, 1974 to June 30, 1976 which was executed by the parties on June 21, 1974. The Association contended that the matter was governed by the amendments of Chapter 123 and cited two recent judicial decisions in support of its argument. The Commission, in denying the Association's motion, reaffirms its determination that with respect to substantive, as opposed to procedural, matters the Legislature did not intend the Chapter 123 amendments to be applied to contracts in existence prior to their effective date. The Commission further notes that the Montclair and Plainfield judicial decisions cited by the Association concern the procedural, not the substantive aspects of the Chapter 123 amendments and are in no way inconsistent with the Commission's determination in this matter.

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	:	
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Appearance:

For the Respondent, Goldberg, Simon & Selikoff, Esqs.  
(Mr. Theodore M. Simon, on the motion)

DECISION AND ORDER ON MOTION

On November 23, 1976, the Commission issued its Decision and Order in the above-captioned scope of negotiations proceeding in In re New Milford Board of Education, P.E.R.C. No. 77-23, 2 NJPER \_\_\_\_\_. The Association has filed a timely Motion for Reconsideration pursuant to N.J.A.C. 19:15-4.1.

In that decision, we determined that the dispute was governed by Chapter 303, Public Laws of 1968 in light of the fact that the disputed contractual provision was contained in a contract covering the period from July 1, 1974 to June 30, 1976 which was executed by the parties on June 21, 1974. We cited an unreported decision of the Appellate Division wherein it was held that the substantive changes in the New Jersey Employer-Employee Relations Act, made by Chapter 123, Public Laws of 1974, are only applicable to contracts entered into after the effective date of

the law, January 19, 1975.<sup>1/</sup>

The Association, in its brief in support of the motion, disputes our conclusion that this matter is governed by Chapter 303 and not by the amendments of Chapter 123. In support of this position, the Association cites two decisions which, it argues, demonstrate the error of the Appellate Division in Ocean Township and our reliance thereon.

The first case cited was decided by the New Jersey Supreme Court, Patrolmen's Benevolent Association v. Montclair, 70 N.J. 130 (1976). In this case, the Supreme Court noted that Chapter 123 gave this Commission exclusive jurisdiction to hear and decide unfair practice charges, see N.J.S.A. 34:13A-5.4(c), and held that that amendment "procedurally has retroactive effect." supra at p. 136. The second case cited was Board of Education of the City of Plainfield v. Plainfield Education Association, Docket No. A-4283-74 (App. Div., November 4, 1976, as yet unreported). In that decision the Appellate Division, citing Montclair, supra, concluded that the Chapter 123 amendments have retroactive effect and apply to pending scope of negotiations disputes as well and ordered that the disputes in that case be transferred to this Commission.

<sup>1/</sup> Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (App. Div., May 5, 1976, as yet unreported). The holding of this case has been consistently applied by this Commission. See In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 76-21, 2 NJPER \_\_\_\_ (1976), In re Piscataway Township Board of Education, P.E.R.C. No. 77-20, 2 NJPER \_\_\_\_ (1976), In re Matawan Regional Teachers Association, P.E.R.C. No. 77-23, 2 NJPER \_\_\_\_ (1976).

The Association contends that these decisions make clear that the instant matter should have been decided on the basis of the statute as it exists under Chapter 123 and not as it did under Chapter 303 of the Public Laws of 1968.

We do not agree. The Montclair and Plainfield decisions concern the procedural, as opposed to the substantive, aspects of the amendments. As previously indicated the Supreme Court in Montclair specifically stated that the amendment granting exclusive unfair practice jurisdiction to this Commission "procedurally has retroactive effect." supra, p. 136. Similarly the Plainfield case dealt only with the question of the appropriate forum to resolve scope of negotiations disputes and did not reach the substantive merits of the underlying controversy. The opinion begins:

"We granted leave to appeal solely to consider the issue of whether the trial divisions of this court have concurrent jurisdiction with the Public Employment Relations Commission (PERC) to consider and determine scope of negotiability questions under N.J.S.A. 34:13A-5.4(d),..."

Ocean Township, supra, note 1, on the other hand does not address forum but specifically holds that with respect to substantive matters, as involved in that case, the Legislature did not intend the amendments to be applied to contracts in existence prior to their effective date. The Court relied upon the amendment of N.J.S.A. 34:13A-8.1 which added the language "during its current term" to that section so that it now reads:

"Nothing in this act shall be construed to annul or modify, or to preclude the continuation of any agreement during its current term heretofore entered into between any public employer and any employee

organization, nor shall any provision hereof annul or modify any pension statute or statutes of this State." (emphasis added)

We have previously stated our agreement with the above analysis of the Appellate Division in the Ocean Township decision and have, of course, followed it. See footnote 1, supra.

We do not see any inconsistency between the holding of that case in the application of the substantive amendments of Chapter 123 and the holdings of Montclair and Plainfield on the application of the procedural changes concerning the appropriate forum made by these amendments. Quite to the contrary, we believe that the three cases read together provide an integrated and rational basis for understanding when the various amendments of Chapter 123 apply to a given dispute and when Chapter 303 applies.

The within case provides a good example. Pursuant to the Plainfield decision this Commission was the appropriate forum for deciding the scope issue presented; however, in deciding that issue the Commission had to apply the substantive law of Chapter 303 as the contract had been entered into under that statute.

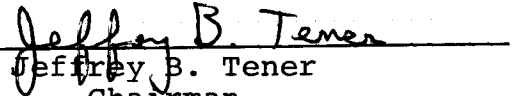
Accordingly the Association's motion for reconsideration is hereby denied.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:15-

4.1 the Motion for Reconsideration filed by the New Milford Education Association is hereby denied.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener and Commissioners Parcels and Hartnett voted for this decision.  
Commissioner Forst abstained.  
Commissioners Hipp and Hurwitz did not participate in this matter.

DATED: Trenton, New Jersey  
December 21, 1976  
ISSUED: December 22, 1976