

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WYCKOFF BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-7

WYCKOFF EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board, the Commission rules on the negotiability of procedures regarding teacher evaluations. The Association claimed that the Board violated certain contractual provisions concerning policies and procedures relating to teacher evaluations and sought to arbitrate this issue. The Board argued that the real purpose of the grievance was to have the Board act favorably on the contracts of two non-tenured teachers who were not re-employed by the Board, thereby seeking arbitration of the Board's final decision not to rehire these teachers. The Board thus contended that the dispute was not within the scope of negotiations.

The Commission finds that the statement of the Association's grievance demonstrates that the grievance concerned claimed violations of the policies and procedures regarding teacher evaluations. The Commission therefore determines, in accord with prior Commission and judicial decisions, that teacher evaluation procedures are required subjects for collective negotiations. The Commission concludes that this matter may now be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' July 1, 1975 to June 30, 1976 collective negotiations agreement. The Commission specifically notes that it is not passing upon the propriety of any possible remedy that may be fashioned, including the reinstatement of the teachers, since that decision is properly for the arbitrator's determination.

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Appearances:

For the Petitioner, Mark G. Sullivan, Esq.

For the Respondent, Goldberg, Simon & Selikoff, Esqs.  
(Mr. Theodore M. Simon, of Counsel)

DECISION AND ORDER

On August 27, 1976, the Wyckoff Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute with the Wyckoff Education Association (the "Association") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").<sup>1/</sup>

The dispute relates to the non-re-employment of two

<sup>1/</sup> The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations is provided by N.J.S.A. 34:13A-5.4(d), which states: "The Commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make determination as to whether a matter in dispute is within the scope of collective negotiations. The Commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

non-tenured teachers represented by the Association, and arose as grievances filed by the two teachers pursuant to the parties' contractual grievance/arbitration procedure. The Association eventually demanded arbitration in connection therewith based upon the parties' collectively negotiated agreement which was in effect from July 1, 1975 through June 30, 1976. The Board, through the within Petition, seeks to prevent the arbitration of the grievances on the ground that the matters raised are outside the scope of collective negotiations.<sup>2/</sup>

The Board, in its Petition and its accompanying brief, sets forth certain factual contentions. None of the basic facts as set forth by the Board was contradicted by the Association in its legal response to the Petition, and therefore we will assume these facts to be true for the purposes of this determination.

On April 27, 1976, the Board made a determination not to rehire four non-tenured teachers. Thereafter, the affected teachers requested a hearing before the Board. The request was granted. At the hearing, the teachers had the opportunity to be represented by counsel. Subsequently, the Board decided to rehire two of the four teachers, but to reaffirm its earlier decision regarding the two other teachers. The Association filed a grievance on behalf of the two teachers who were not rehired and stated that they were aggrieved by violations of the Board's policies and

<sup>2/</sup> The Board had initially decided to seek a temporary restraint of the arbitration. However, the parties agreed, and the arbitrator concurred, in postponing the arbitration until after the Commission rendered its decision, thereby making a temporary restraint of arbitration unnecessary.

procedures regarding teacher evaluations. After both the Superintendent and the Board denied the grievance the Association sought arbitration. Thereafter, the instant Petition was filed.

Essentially, the Association claims that the Board violated certain contractual provisions concerning policies and procedures regarding teacher evaluations, and that since teacher evaluation procedures are required subjects of negotiations, arbitration should be used to resolve the dispute.

The Board, however, argues that the real purpose of the grievance was to have the Board act favorably on the teachers' contracts, thereby seeking arbitration of the Board's final decision not to rehire the teachers. Thus, the Board contends that the dispute is not within the scope of negotiations because the determination of who should be employed or re-employed is a matter of educational policy.

Although the Board argues that the grievance was actually designed to force the reinstatement of non-tenured teachers through arbitration, the statement of the grievance demonstrates that the grievance concerns claimed violations of the policies and procedures regarding teacher evaluations.<sup>3/</sup>

<sup>3/</sup> Part B.1. of the grievance is as follows: "Statement of Grievance - we are aggrieved by violations of the Board of Education's policies and procedures regarding Teacher Evaluation, the agreement between the Board of Education of the Township of Wyckoff and the Wyckoff Education Association; specifically Article I Recognition, Article XVI - Evaluation Process, and other aspects of contractual deviations and other relevant sections of the agreement."

The issue of whether teacher evaluation procedures is a required subject for negotiations and therefore properly within the scope of negotiations has been considered by this Commission in previous cases.<sup>4/</sup>

In Englewood, supra note 4, the Commission found that fair dismissal and teacher evaluation procedures related to teachers' terms and conditions of employment and were therefore within the scope of required negotiations. Similarly, in Plainfield, supra note 4, the Commission found that the meaning of the word hearing contained in the contractual language setting forth the fair dismissal procedure related to a term and condition of employment and was therefore negotiable and arbitrable. Moreover, even if the grievance in the instant matter went, as the Board argued, to the merits of the Board decision not to re-employ the affected teachers, the Commission in Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 2 NJPER \_\_\_\_ (1976), held that the merits of a board of education's decisions not to renew the contract of a non-tenured teacher is a permissive subject of negotiations which, like required subjects, may be submitted to arbitration for resolution if otherwise arbitrable under the parties' agreement.<sup>5/</sup>

<sup>4/</sup> In re the Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976), appeal pending (Appellate Division Docket No. A-3018-75); In re Plainfield Board of Education, P.E.R.C. No. 76-45, 2 NJPER 216 (1976), appeal pending (Appellate Division Docket No. A-4378-75).

<sup>5/</sup> In a letter opinion by Superior Court Judge Peter J. Devine, Jr., sitting as Chancery Judge for Camden County, the Court reaches a similar conclusion as the Commission did in

(Continued)

Since it has been determined that the instant matter concerns teacher evaluation procedures, and since such procedures have been found to be required subjects of negotiations, it would be arbitrable if otherwise arbitrable under the parties' agreement.<sup>6/</sup> However, it should be noted that although we have determined that the instant matters are arbitrable, we are not passing upon the propriety of any possible remedy including the reinstatement of the teachers, since that decision is properly for the arbitrator's determination.<sup>7/</sup> A similar conclusion was reached by the court in City of Camden Board of Education, supra note 5, where the court, after determining the arbitrability of teacher evaluation procedures, held:

Nothing in this opinion shall be construed as adopting either the reasoning or the remedies suggested by the cases...beyond the simple finding of arbitrability (at p. 4).

#### ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), the Public Employment Relations Commission hereby determines that the matter in dispute involving teacher evaluation procedures is a required subject for collective negotiations.

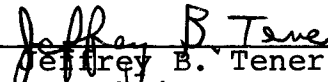
5/ (Continued) Englewood, supra note 4 and Plainfield, supra note 4. In the civil case the Court refused to restrain an arbitration because the subject matter concerned teacher evaluation procedures. City of Camden Board of Education v. Camden Education Association, Docket No. C-1681-75 decided August 4, 1976.

6/ See Bridgewater-Raritan, supra.

7/ The parameters of a scope decision were enunciated by the Commission in In re Hillside Board of Education, P.E.R.C. No. 76-11 at p. 9, 1 NJPER 55, 57 (1975).

The request of the Wyckoff Board of Education for a permanent restraint of arbitration of this matter is hereby denied and this matter may now be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' July 1, 1975 to June 30, 1976 collective negotiations agreement.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.  
Commissioners Hipp and Hurwitz abstained.

DATED: Trenton, New Jersey  
February 17, 1977

ISSUED: February 18, 1977