

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL EDUCATION
ASSOCIATION,

Petitioner,

-and-

Docket No. SN-77-17

PASCACK VALLEY REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent.

SYNOPSIS

In a Decision and Order on Motion, the Commission denies the Association's Motion for Clarification, considered as a Motion for Reconsideration, with respect to the Commission's earlier scope determination in In re Pascack Valley Regional Education Association, P.E.R.C. No. 77-55, ~~33~~³³NEWFER 114 (1977). The Commission does, however, re-emphasize that in a situation involving a Chapter 303 contract, an agreement by a public employer, such as a board of education, to contractually agree to make assignments to extracurricular positions on a voluntary basis would have been ultra vires and unenforceable. On the other hand, to the extent that ~~the~~ instant dispute is subject to Chapter 123, the Commission affirms that a board of education could agree to make assignments to coaching positions on a voluntary basis to the exclusion of involuntary assignments. The Commission notes in this regard that this agreement would be enforceable -- although the Commission itself does not attempt to exercise authority over its enforcement -- and disputes relating to this provision would be arbitrable, if otherwise arbitrable under the parties' agreement.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL EDUCATION
ASSOCIATION,

Petitioner,

-and-

Docket No. SN-77-17

PASCACK VALLEY REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,
Respondent.

Appearance:

For the Petitioner, Goldberg, Simon & Selikoff, Esqs.
(Mr. Theodore M. Simon, on the Motion)

DECISION AND ORDER ON MOTION

On April 20, 1977, the Commission issued its Decision in the above-captioned scope of negotiations proceeding in In re Pascack Valley Regional Education Association, P.E.R.C. No. 77-55, 3 NJPER ___ (1977). The Pascack Valley Regional Education Association (hereinafter the "Association") filed a Notice of Motion on May 5, 1977 seeking a clarification of the above-entitled decision. A short statement in lieu of brief was submitted along with the Notice of Motion. For the purpose of this decision the Association's motion will be treated as a timely filed Motion for Reconsideration, pursuant to N.J.A.C. 19:15-4.1.

In the above referenced scope proceeding the Association had sought a determination as to whether the assignment of teachers to extracurricular activities, including athletic coaching assignments, was a required subject for collective negotiations. The Commission concluded that the negotiability dispute between the

parties arose under a contract executed prior to the effective date of Chapter 123 of the Public Laws of 1974, amending the New Jersey Employer-Employee Relations Act, and therefore determined that the substantive law to be applied was governed by the state of the law as it existed under Chapter 303, Public Laws of 1968. The Commission further found, consistent with its earlier decision in In re Rutherford Education Association, P.E.R.C. No. 77-22, 3 NJPER 37 (1976), that the decision to assign teachers to athletic coaching duties was a managerial policy decision, which was not negotiable under Chapter 303 precedent.^{1/}

In its motion papers the Association asserts that the Commission did not decide whether or not, under Chapter 303 and Chapter 123 legal precedents, a public employer such as the Pascack Valley Regional High School District Board of Education (hereinafter the "Board") could contractually agree to make assignments to athletic coaching positions exclusively on a voluntary or permissive basis, to the exclusion of involuntary assignments. The Association stated that it was the directive of the Court in the related judicial proceeding involving the Board and the Association [Case No. C-3924-75, Superior Court of New Jersey - Chan. Div.]⁷ that the Commission determine whether the Board could contractually agree to make assignments to coaching positions on a voluntary basis.

The Commission believes, contrary to the contention of the Association, that it has fully and adequately answered the

^{1/} See also, Board of Education of the City of Asbury Park v. Asbury Park Education Association, et al, 145 N.J. Super. 495 (Chanc. Div. 1976).

negotiability issues before it relating to assignments to coaching positions.

At page 4 of its slip opinion, the Commission indicated that it had concluded that the instant dispute concerned a Chapter 303 contract. The Commission, therefore, cited its decision in a similar matter relating to assignments to extracurricular activities in In re Rutherford Education Association, supra, in which the Commission applied Chapter 303 as construed by the New Jersey Supreme Court in its Dunellen Trilogy^{2/} to the facts in that case inasmuch as the dispute in that case arose pursuant to a collective negotiations agreement governed by Chapter 303. In Rutherford, the Commission held that the decision to sponsor extracurricular activities and to require teachers to conduct them was not negotiable. It was the Commission's determination that, given the Dunellen Trilogy of cases and its progeny, disputes regarding such matters which arose under contracts entered into prior to the effective date of Chapter 303 were not arbitrable.^{3/} An agreement by a public employer such as the Board, in a situation involving a Chapter 303 contract, to contractually agree to make assignments to extracurricular positions on a voluntary basis would have been ultra vires and unenforceable.

^{2/} Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); The Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973); Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973).

^{3/} See Board of Education of Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (App. Div. May 6, 1976).

On the other hand, to the extent that the instant dispute is subject to Chapter 123,^{4/} the Commission stated at page 5 of its decision,

"The decision to assign teachers to extra-curricular activities would now under a Chapter 123 agreement⁷ appear to be a permissive subject of negotiations^{5/} while the effect on terms and conditions of employment remains mandatorily negotiable, and therefore both subjects would be arbitrable if otherwise arbitrable under the parties' agreement. In re Bridgewater-Raritan Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976)."

It is axiomatic, given the above quotation, that the Commission would find that a Board of Education could, in a Chapter 123 agreement, contractually agree to make assignments to coaching positions on a voluntary basis, to the exclusion of involuntary assignments. This agreement would be fully enforceable^{6/} and disputes relating to this provision would be arbitrable, if otherwise arbitrable under

-
- 4/ The Association maintained in its scope petition that there was an ongoing dispute which "pervades a pre-Chapter 123 collective bargaining agreement as well as a post-Chapter 123 collective bargaining agreement."
- 5/ For a discussion of the meaning of the term "permissive subject" see In re Board of Education of the City of Trenton, E.D. No. 76-11, 1 NJPER ____ (1977) at footnote 1, pages 4-5. See also, In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER ____ (1977).
- 6/ It should be noted that when a permissive subject is included in an agreement the Commission does not attempt to exercise authority over its enforcement. The Commission's only involvement is to pass upon its negotiability and arbitrability in scope proceedings when such a dispute arises. In such cases, with regard to Chapter 123 contracts, the Commission only goes so far as to indicate that the matter is permissively negotiable and therefore the Commission will not restrain arbitration. See e.g. In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977) and In re Piscataway Township Board of Education, P.E.R.C. No. 77-65, 3 NJPER ____ (1977). However, the Commission would also note that the enforceability of such agreements would appear always to be subject to exigent circumstances which might otherwise preclude a public employer from fulfilling its governmental mission. See Porcelli v. Titus, 108 N.J. Super., 301 (App. Div. 1969).

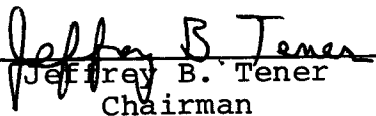
the parties' agreement.^{7/}

Given this amplification or clarification we see no reason to further reconsider our prior Decision and Order.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:14-4.1, the Association's Motion for Clarification, considered as Motion for Reconsideration, is hereby denied. However, the Order and Decision in our prior decision, P.E.R.C. No. 77-55, shall be read and interpreted in a manner consistent with the above discussion.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision.
Commissioner Forst voted against this decision.
Commissioner Hurwitz was not present.
Commissioner Hipp abstained.

DATED: Trenton, New Jersey
June 21, 1977
ISSUED: June 22, 1977

^{7/} As pointed out in numerous Commission decisions with respect to the negotiability of a matter sought to be processed pursuant to a collectively negotiated grievance/arbitration procedure, the Commission will not determine that the matter is within the arbitration clause of the agreement, that the facts are as alleged by the grievant, that the contract provides a defense for the employer's alleged action, whether there is a valid arbitration clause in an agreement, or in any other similar question. See e.g., In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).