P.E.R.C. NO. 2009-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY VOCATIONAL SCHOOLS
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2009-011

BERGEN COUNTY VOCATIONAL AND
TECHNICAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Bergen County Vocational Schools Board of Education for a restraint of binding arbitration of a grievance filed by the Bergen County Vocational and Technical Education Association. The grievance asserts that the Board did not give proper notice before reducing the salaries of all guidance counselors at the same time the Board changed their 12-month positions to 10-month positions. The Commission holds that notice of a reduction-in-force is negotiable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Nowell Amoroso Klein Bierman, P.A., attorneys (William C. Souskas, of counsel)

For the Respondent, Bucceri and Pincus, attorneys (Gregory T. Syrek, of counsel)

DECISION

On August 20, 2008, the Bergen County Vocational Schools Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bergen County Vocational and Technical Education Association. The Association seeks to arbitrate a grievance alleging that the Board did not give proper notice before reducing the salaries of all guidance counselors at the same time the Board changed their 12-month positions to 10-month positions. The grievance requests that the arbitrator order the Board to "[n]otify parties (of the changes) as per approved method." We decline to restrain arbitration.

The parties have filed briefs and exhibits. The Board has filed the certification of its Human Resources Director. These facts appear.

The Association represents the Board's certificated, non-supervisory professional personnel, including guidance counselors. The parties' collective negotiations agreement is effective from July 1, 2005 through June 30, 2008. The grievance procedure ends in binding arbitration. Article II(C)(2) of the agreement allows the Board to abolish positions for economic reasons, declining pupil enrollment, changes in administrative or supervisory organization, or other good cause. Articles VI and VII, respectively, address salaries and work year for both 10-month and 12-month employees.

The Director states that on March 25, 2008, he and two other Board representatives met with the district's 12-month guidance counselors, the Association President and another Association officer to advise them that the Board planned to reclassify them as 10-month employees.[1/]

At the May 19, 2008 Board meeting, one of the counselors asked the Board to reconsider its plan to reduce the counselors to 10-month positions and also submitted a written statement. At its June 25 meeting, the Board approved a resolution labeled "Reduction in Force - Guidance Staff" that: reclassified all 12-

1/ Two of the 12-month counselors were not present.

month guidance counselors to 10-month positions; placed the names of the affected employees on a "Preferred Eligibility List" for re-employment as 12-month guidance counselors; and directed that the Board Secretary notify the individuals either in person or by certified mail. A separate resolution adopted at the same meeting reduced the salaries of the affected counselors by moving them from the 12-month salary guide to the corresponding step of the 10-month guide. This lowered the salaries of the affected counselors by amounts ranging from $5,000 to $9,000.

On July 29, 2008, the Association filed a grievance asserting that the Board "did not properly notify the parties involved in reduction in salary from 12 months to 10 months." It suggests the dispute can be resolved by having the Board "Notify parties involved as per approved method." This petition ensued.[2/]

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

> The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether

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2/ Because the Association had not yet filed a demand for arbitration, we held the case in abeyance. On March 5, 2009, the Board's Director of Human Resources filed a written response to the Association's grievance denying that the Board had violated the contract or any statutory procedures regarding notice of personnel actions. On March 12, the Association demanded binding arbitration.

> the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The Board argues that the grievance is not arbitrable because: it had a prerogative to RIF the employees; there is no notice provision in the parties' agreement; the Board's action was properly taken in an open meeting and did not warrant notices

to affected employees of the type described in Rice v. Union Cty. Reg. H.S. Bd. of Ed., 155 N.J. Super. 69, 73-74 (App. Div. 1977);[3/] and any dispute over whether the Board had an obligation to issue Rice notices is within the jurisdiction of the Commissioner of Education.

We need not address whether the Board had a prerogative to reduce the counselors' work year and compensation because the grievance and demand for arbitration do not challenge it. The issue sought to be arbitrated is whether the Board violated the contract by failing to give proper notice of those personnel actions.

Our Supreme Court has held that adequate notice is a mandatorily negotiable subject, even if the underlying personnel decision is not. See Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 33-34 (1982) (negotiation of and adherence to procedures giving notice of staff reductions to majority representative and affected employees mandatorily negotiable). Thus where an employer makes hiring, layoff, non-renewal and promotion decisions, notice and other procedural provisions are mandatorily negotiable and

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3/ Under Rice, terminated employees are entitled to reasonable notice of the Board's intention to consider personnel matters related to them; under an exception to the Open Public Meetings Act, N.J.S.A. 10:4-15, such employees can waive their right to have the school board discuss their employment in private session.

enforceable through grievance arbitration. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 27 (App. Div. 1977) (provision requiring that notice of vacancies be posted mandatorily negotiable); North Bergen Tp. Bd. of Ed. v. No. Bergen Federation of Teachers, 141 N.J. Super. 97, 104 (notice of promotional vacancy and window period for current employees to file applications mandatorily negotiable). Cf. Old Bridge Tp. Bd. of Ed. and Old Bridge Ed. Ass'n, 98 N.J. 523 (1985) (allowing limited money damages for late notice to employee of economic layoff).

The Board’s arguments as to whether or when it had any contractual or statutory obligation to provide a particular form of notice, and the extent to which the personnel changes could be discussed in private or public session involve the merits of the grievance and/or contractual arbitrability issues outside our jurisdiction. See Ridgfield Park. We do not accept its argument that Rice issues are non-arbitrable. As notice guarantees are negotiable, an arbitrator may apply statutes or rules governing such issues. See Atlantic City Bd. of Ed., P.E.R.C. No. 98-26, 23 NJPER 507, 508 (¶28247 1997), citing West Windsor Tp. and

PERC, 78 N.J. 98, 107 (1978).[4/] We express no opinion on whether there was a Rice violation.

ORDER

The request of the Bergen County Vocational Schools Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: March 26, 2009

Trenton, New Jersey

4/ Penns Grove-Carneys Point Bd. of Ed., D.U.P. No. 97-4, 22 NJPER 271 (¶27143 1996), a decision by the Director of Unfair Practices, is not controlling. That case asked whether a Rice violation could be an unfair practice, not whether the issue of notice is mandatorily negotiable and legally arbitrable.