

P.E.R.C. NO. 2009-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIR HAVEN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2009-027

FAIR HAVEN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Fair Haven Board of Education for a restraint of binding arbitration of a grievance filed by the Fair Haven Education Association. The grievance challenges the 2008-2009 salary guide placements of teachers who began teaching during the 2007-2008 school year. The Board claims that the teachers were overpaid during 2007-2008. The Commission concludes that placement on the salary guide is a mandatorily negotiable compensation issue that may proceed to binding arbitration.

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, Lindabury, McCormick, Estabrook & Cooper, PC, attorneys (Anthony P. Sciarrillo, on the brief)

For the Respondent, Detzky & Hunter, LLC (Stephen B. Hunter, on the brief)

DECISION

On November 24, 2008, the Fair Haven Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Fair Haven Education Association challenging the 2008-2009 salary guide placements of teachers who began teaching during the 2007-2008 school year. The Board claims that the teachers were overpaid during 2007-2008. We decline to restrain binding arbitration.

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

The Association represents teachers and other certificated personnel. The parties' collective negotiations agreement is effective from July 1, 2006 through June 30, 2009. The grievance procedure ends in binding arbitration. Articles VII (A.2) and VIII (B) provide that teachers will get up to ten years credit for prior experience towards initial salary guide placement.

In the Spring of 2007, the Board hired five new teachers for the 2007-2008 school year. They had between two and ten years' teaching experience. All were issued individual employment contracts listing their 2007-2008 salaries and their positions on the salary guide. According to the Board, these salaries were too high because the teachers were paid according to a second column on the salary guide rather than the first. The Board asserts that this error was discovered in April 2008.

After noticing the alleged mistake, the Board contacted the Association and advised that the salaries of the teachers for 2008-2009 would be adjusted to their appropriate steps.^{1/}

On May 20, 2008, the Association filed a group grievance asserting that the affected teachers should be advanced an additional step on the salary guide from where they had been

^{1/} Only three of the five teachers continued to teach for the Board during the 2008-2009 school year.

placed on the 2007-2008 guide. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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 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. [Id. at 154]

Thus, we cannot consider the merits of the grievance or the parties' contractual defenses.

Local 195, IFPTE v. State, 88 N.J. 393 (1982) articulates a three-part test for determining negotiability.

[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 404-05]

The Board argues that it has a managerial prerogative to recoup payments made under an erroneous calculation of salary. It cites education law rulings that a school district has a right to recoup overpayments made to non-tenured personnel. Although the Board has not indicated that it wants to recoup any funds, it has moved to correct what it believes were salary guide misplacements. The Association responds that the five teachers were properly paid in 2007-2008 and its grievance asserts that the teachers were improperly denied salary advancement as required by the contract.

Under the negotiability balancing test, placement on the salary guide is a mandatorily negotiable compensation issue. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000); Cranford Bd. of Ed., P.E.R.C. No. 2003-19, 28 NJPER 415 (¶33151 2002). The Association claims that the teachers were not placed on the proper steps of the negotiated salary guide for 2008-2009. The Board disagrees. This compensation dispute may proceed to binding arbitration.

ORDER

The request of the Fair Haven Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: May 28, 2009

Trenton, New Jersey