

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY COLLEGE OF MORRIS,

Petitioner,

-and-

Docket No. SN-77-21

FACULTY ASSOCIATION OF THE COUNTY  
COLLEGE OF MORRIS, a/w N.J.E.A.

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the College, the Commission determines that the matter in dispute involving faculty evaluation procedures is a required subject for collective negotiations, in accord with established Commission precedent. The Commission therefore denies the request of the College for an order restraining arbitration of this matter and an order further enjoining proceedings in a related unfair practice charge. The Commission concludes that the contractual dispute may now be submitted to arbitration if otherwise arbitrable under the terms of the parties' current collective negotiations agreement. The Commission emphasizes in this case again that in a scope of negotiations proceeding its jurisdiction is strictly limited to a determination of the negotiability of the actual matters in dispute. The Commission does not consider whether the actions of any party in the factual circumstances surrounding a requested scope determination constitute unfair practices as defined by the Act. Similarly, in scope proceedings the Commission does not determine whether or not parties have concluded an agreement with regard to a disputed matter and memorialized such agreement in their written collective negotiations agreement.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY COLLEGE OF MORRIS,  
Petitioner,

-and-

Docket No. SN-77-21

FACULTY ASSOCIATION OF THE COUNTY  
COLLEGE OF MORRIS, a/w N.J.E.A.,  
Respondent.

Appearances:

For the Petitioner, Vogel, Chait & Wacks, Esqs.  
(Mr. Arnold H. Chait and Ms. Kathryn N. Roettger,  
on the Brief; Ms. Roettger argued orally)

For the Respondent, Sterns, Herbert & Weinroth, Esqs.  
(Mr. Michael J. Herbert, of Counsel)

DECISION AND ORDER

On January 21, 1977 the County College of Morris (hereinafter the "College") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (hereinafter the "Commission") seeking a determination as to whether certain matters in dispute with the Faculty Association of the County College of Morris (hereinafter 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. (hereinafter the "Act").<sup>1/</sup> The instant petition

<sup>1/</sup> The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations appears at N.J.S.A. 34:13A-5.4(d): "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a 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

(Continued)

also requested that the Commission grant interim relief in the form of an order restraining arbitration proceedings concerning the matters in dispute. In a letter dated January 24, 1977, the Special Assistant to the Chairman of the Commission, citing various Commission decisions concerning the negotiability of evaluation procedures and the arbitrability of both permissive and mandatory subjects of negotiations, suggested to the parties that it was unlikely that the Commission would grant the College's request for interim relief. The College was invited to contact the Special Assistant if it desired to proceed further with its request for a restraint of arbitration. That request was not pursued but the Association voluntarily agreed to hold its demand in abeyance pending the Commission's determination of the within disputed matters. Pursuant to a request of the College and N.J.A.C. 19:13-3.6, both parties appeared before the Commission on April 19, 1977 to argue orally.<sup>2/</sup>

The dispute, as stated by the College, relates to the negotiability of the method by which student questionnaires evaluating faculty are to be collected, counted, and transmitted to the

<sup>1/</sup> (Continued) commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

<sup>2/</sup> Prior to the filing of the instant petition, the Association filed an Unfair Practice Charge, Docket No. CO-77-154, relating to the within dispute and subsequent thereto filed a Notice of Impasse seeking a mediator to assist in negotiations concerning several matters in dispute. Both of these matters are still pending.

College administration. The Association characterizes the dispute as one concerned with procedures by which members of the faculty are evaluated by the College administration. Despite the disparate statements of the dispute, both parties agree that the student questionnaires are one of the components considered by the College administration in evaluating the performance of a faculty member.

It is the position of the College, as proffered in its brief and oral argument, that the dispute in question relates not to terms and conditions of employment but rather to the ministerial details of transmitting student evaluation questionnaires to the College administration, and to the employer's right to measure the performance and productivity of the College faculty. By analogy to both judicial and Commission decisions, the College argues that the matters herein in dispute relate not to procedural safeguards in evaluation procedures but to managerial prerogatives beyond the scope of collective negotiations. In addition, in its brief, the College renewed its request for a restraint of arbitration, and addressed at length a similar request for an order enjoining further proceedings on the aforementioned unfair practice charge.

The Association argues that the dispute directly concerns procedures for teacher (i.e., faculty) evaluation rather than a productivity study or the public employer's right to perform ministerial acts. Citing substantial Commission precedent, the Association requests a determination that the matters in dispute are mandatory subjects of collective negotiations. In response

to the College's request for an interim restraint of arbitration, it is urged that even if the matters in dispute are permissive rather than mandatory subjects of negotiations, they may properly be submitted to arbitration. Thus, the Association contends that its demand for arbitration should not be subject to the restraints requested by the College.

Having carefully considered the arguments and briefs submitted by the parties, the Commission finds, contrary to the position taken by the College, that the within dispute involves procedures for teacher evaluation rather than any inherent managerial prerogative to perform ministerial acts or to conduct a productivity study. More specifically, we conclude, in agreement with the statements offered by the parties, that student evaluation questionnaires are an important component in the system used to evaluate a teacher's performance. Clearly they affect a faculty member's opportunity for retention and promotion as both parties have acknowledged. Therefore, the methods by which the aforementioned questionnaires are disseminated, administered and collected, and the procedures utilized to insure their integrity and security, are part and parcel of a teacher evaluation procedure.

The issue of whether teacher evaluation procedures are a required subject of collective negotiations has been considered<sup>3/</sup> by the Courts of this state and the Commission in previous cases.

<sup>3/</sup> In re Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976); reversed on other grounds, App. Div. Docket No. A-3018-75 (1977); In re Plainfield Board of Education, P.E.R.C. No. 76-45, 2 NJPER 216 (1976), (appeal dismissed by stipulation) (Continued)

These decisions held, and we now reaffirm, that procedures regarding teacher evaluation are required subjects of negotiations. This is to be distinguished from substantive evaluations which are a managerial prerogative and a permissive rather than mandatory subject of negotiations.

As we have determined that the instant dispute concerns teacher evaluation procedures, and since such procedures have been determined to be mandatory subjects of negotiations, the instant dispute may properly be submitted to arbitration, if it is otherwise arbitrable under the parties' agreement.

Prior to concluding our discussion of this matter, it must be noted that many of the arguments advanced by the parties in their briefs and at oral argument actually concerned the course of collective negotiations between the parties and the merits of the aforementioned unfair practice charge. Arguments of this type are irrelevant to a Commission decision in a scope of negotiations proceeding and they were therefore excluded from our deliberations in this matter. We wish to emphasize that in a scope of negotiations proceeding, our jurisdiction is strictly limited to a determination of the negotiability of the actual matters in dispute. We do not consider, nor do we decide, whether

3/ (Continued) Docket No. A-4378-75; In re Wyckoff Board of Education, P.E.R.C. No. 77-41, 3 NJPER \_\_\_\_\_ (1977); and City of Camden Board of Education v. Camden Education Association, Docket No. C-1681-75, decided August 4, 1976, wherein Judge Devine, sitting as Chancery Judge for Camden County, refused to restrain an arbitration because the subject matter concerned teacher evaluation procedures.


the actions of any party in the factual circumstances surrounding the requested scope of negotiations determination constitute unfair practices as defined by the Act. Similarly, we do not determine whether or not the parties have concluded an agreement with regard to the disputed matter and memorialized such agreement in their written collective negotiations agreement.<sup>4/</sup>

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7, the Public Employment Relations Commission hereby determines that the matter in dispute involving faculty evaluation procedures is a required subject for collective negotiations.

The request of the County College of Morris for an order restraining arbitration of this matter and enjoining further proceedings in an Unfair Practice Charge, Docket No. CO-77-154, is hereby denied. The contractual dispute may now be submitted to arbitration if otherwise arbitrable under the terms of the parties' current collective negotiations agreement.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst and Hartnett voted for this decision.

Commissioner Hipp abstained and Commissioner Hurwitz voted against this decision. Commissioner Parcells was not present.

DATED: Trenton, New Jersey

May 12, 1977

ISSUED: May 13, 1977

<sup>4/</sup> See In re Woodbridge Township Board of Education, P.E.R.C. No. 77-51, 3 NJPER \_\_\_\_\_, (1977) (appeal pending).