

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLUMBERS AND STEAMFITTERS LOCAL  
NO. 270, CARPENTERS LOCAL NO.  
65, AND PAINTERS LOCAL NO. 144,

Petitioner,

-and-

Docket No. SN-77-12

WOODBIDGE TOWNSHIP BOARD OF  
EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Union, the Commission rules on the negotiability of tenure for certain tradesmen employed by the Board. This dispute arose during the course of negotiations for a successor agreement to replace the parties' prior contract which had expired on June 30, 1976. Although the parties had agreed over the last several years to provide tenure contractually for these tradesmen, the Board had refused to include a provision for the tenure of tradesmen in a new agreement and further refused to negotiate about this issue. The Board argued that tenure could only be acquired by those public employees who were specifically accorded tenure under Title 18A, and that it would be illegal to negotiate tenure protections for tradesmen who were not accorded same under Title 18A. The union argued that tenure involved a term and condition of employment and was a required subject of negotiations. Despite the parties' differences over the instant matter, they executed a new agreement and agreed that the issue of the negotiability of tenure would be submitted to the Commission for its determination.

The Commission determines that tenure, in the context of this case, is a required subject for collective negotiations and orders that the Board negotiate in good faith regarding tenure for tradesmen upon the demand of the Union. The Commission notes that it uses the term "tenure" only as a synonym for job security and does not mean to imply that tenure in this case is identical to tenure as set forth in Title 18A. The Commission specifically rejects the Board's argument that legislative silence regarding the issue of tenure for tradesmen renders that subject illegal for negotiations. The Commission finds that the absence of a statutory provision granting tenure for tradesmen does not mean that parties are prohibited from negotiating this protection for these employees.

The Commission determines that the nature of tenure itself is to provide employee job security and therefore bears most directly on employees' continued employment. The Commission determines that as such nothing can have a more paramount effect on terms and conditions of employment and that therefore tenure is a required subject of negotiations. Regarding a second point raised by the Union, i.e. that certain employees by virtue of prior contracts had already acquired tenure, the Commission notes that in a scope proceeding it addresses only the abstract issue of whether a particular issue is a required, permissive or illegal subject for negotiations and will not comment on the issue of whether certain tradesmen have already acquired tenure. This involves a determination that may be made by the parties, the judiciary, or by an arbitrator.

P.E.R.C. No. 77-51

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Appearances:

For the Petitioner, Alfred J. Petit-Clair, Jr., Esq.  
For the Respondent, Huff, Berkow & Hollander, Esqs.  
(Joseph J. Jankowski, of Counsel)

DECISION AND ORDER

On October 29, 1976, the Plumbers and Steamfitters Local No. 270, Carpenters Local No. 65 and Painters Local No. 144 (the "Union") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the Union and the Woodbridge Township Board of Education (the "Board") is 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 arose during the course of negotiations for a successor agreement. The parties disagreed as to whether tenure, within the context of this case, was a proper subject for collective negotiations. The Union thus, through the filing of this Petition, seeks a determination as to whether tenure is a required or illegal subject for negotiations.<sup>2/</sup>

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

On June 30, 1976, the parties' prior collective negotiations agreement expired and negotiations began for a new agreement.

<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."

<sup>2/</sup> The Petitioner actually sought two objectives through the filing of the Petition, as stated therein:

- (a) a determination that tenure is a permissible subject for collective bargaining, and
- (b) that the employees, by virtue of prior contracts, have acquired tenure.

But the primary issue herein is whether tenure is a required, permissive, or illegal subject of negotiations. While this decision will address that issue and is intended to resolve the negotiability of tenure, it does not pass upon the areas of tenure covered by the Education Laws. See N.J.S.A. 18A:1-1, et seq.

While the decision herein repeatedly uses the word "tenure", the Commission has used that term because it was used by the parties. However, the Commission uses that word only as a synonym for job security and does not mean to imply that "tenure" in this case is identical to "tenure" as set forth in the Educational Laws.

Although the parties have agreed over the last several years to provide tenure contractually for certain tradesmen,<sup>3/</sup> the Board in the instant negotiations refused to include a provision for the tenure of tradesmen in a new agreement, and further refused to negotiate about this issue, arguing that tenure could only be acquired by those public employees who were specifically accorded tenure under the Education Laws. The Board maintained that the Education Law was silent as to tenure for tradesmen and that therefore they had not and could not acquire tenure, and moreover, that it would be illegal for them to acquire tenure through negotiations. The Union argued, however, that the parties had contractually agreed upon a grant of tenure for the tradesmen over the last several years, and that several employees have acquired tenure pursuant to those previous agreements, and that therefore tenure involves a term and condition of employment and is a required subject of negotiations.

Despite their differences over the instant matter, the parties executed a new agreement which provided, among other matters, tenure to those employees who were already accorded the same by statute. However, the parties also executed a "side-bar agreement" in which the negotiability of tenure remained open for further resolution.

The issue in this case, the legality of negotiating protections

<sup>3/</sup> The Petition revealed that the tradesmen referred to herein concern approximately 17 maintenance men. Although the Education Law provides tenure for janitorial employees, see N.J.S.A. 18A:17-3 and 18A:17-4, there was no claim by either party that the instant tradesmen were janitors within the meaning of the statute. The statutes thus appear to be silent regarding tenure for the instant employees.

in the absence of statutory provisions, is not a novel issue. When the New Jersey Supreme Court decided Donaldson v. Board of Education of North Wildwood,<sup>4/</sup> the Education Laws, N.J.S.A. 18A:1-1 et seq., were silent as to whether a non-tenured teacher was entitled to a statement of reasons and a hearing when not being reemployed. In holding that the teachers were entitled to the same, the Court said:

Surely the tenure system would not be adversely affected or at all impaired if the board were called upon to respond to the teacher's inquiry....  
at 241.

However, the Court in Donaldson went even further when it intimated that the parties could agree to provide by collective agreement what was not otherwise granted, but not prohibited, by statute.

The Court held:

Many boards by collective contracts under N.J.S.A. 34:13A-1 et seq. have already agreed to furnish reasons... We are convinced that in the process, the tenure system will have been strengthened rather than impaired and that the controlling values of fairness and justice will have been satisfied rather than ignored.  
at 248.

In relating the Donaldson, supra case to the instant situation we find a similar result. The parties, several years ago, agreed to provide tenure to those tradesmen who worked three years or more. Since instituting those contract provisions several employees have acquired tenure and have continued their employment with that expectation. Although the Board argues that the absence of tenure for tradesmen in the statutes makes the subject illegal

<sup>4/</sup> 65 N.J. 236 (1974).

for negotiations, we believe that illegality cannot be inferred from the mere fact that the Legislature has not chosen to grant the benefit by statute to all employees. The absence of a statutory provision does not mean that the parties are prohibited from negotiating protections for employees. Instead, it is simply necessary that the public employer possess the general authority in order for it to be permitted to negotiate such protections.

In support of that position, the Court in City of Camden v. Dicks, 135 N.J. Super. 559 (1975), held in most persuasive language that a municipality's bargaining relationship would be hampered if it could not negotiate over subjects that were not expressly restricted. That case involved the City's desire to negotiate regarding payment for unused sick leave and the Court said at pp. 562 and 563:

The Legislature in no place has withdrawn from a municipality the power to pay for unused sick leave. In the absence of express restriction against bargaining for that term of an employment contract between an employer and its employees, the authority to provide for such payment resides in the municipality under the broad powers and duties delegated by the statutes. Were it otherwise a municipality would not be able to bargain collectively and to make agreements concerning terms of employment with its employees unless specific statutory authority for each provision of the agreement existed. Such a narrow and inflexible construction would virtually destroy the bargaining powers which public policy has installed in the field of public employment and throttle the ability of a municipality to meet the changing needs of employer-employee relations.... Such a construction would undermine the laudable purposes of New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

Other cases have also refuted the Board's argument that legislative silence regarding the negotiability of a particular subject renders that subject illegal for negotiations.<sup>5/</sup>

Having concluded that legislative silence does not render a subject illegal for negotiations, it is now necessary to analyze the instant subject matter and to determine whether tenure is a term and condition of employment. It is the Commission's rationale that a review of tenure in the abstract reveals that nothing could be more important to an employee than his or her continued job security and protection from unfair or unwarranted dismissal. The nature of tenure itself is to provide that job security and it therefore bears most directly on an employee's continued employment. As such, nothing can have a more paramount effect on terms and conditions of employment. Therefore tenure is found to be a mandatory subject of negotiations.<sup>6/</sup>

Additionally, the Commission does not believe that the holding in the Appellate Division's recent decision in Union County Bd. of Ed. v. Union County Teach. Assn., 145 N.J. Super 435 (App. Div. 1976), cert. den. \_\_\_ N.J. \_\_\_ (March 1, 1977), which concerned the limited issues of "criteria or guidelines" to govern boards of education in making the selection of non-tenured teachers

<sup>5/</sup> Donaldson v. Board of Education of North Wildwood, supra; New Jersey Civil Service Assoc. v. Mayor, Camden, 135 N.J. Super. 308, 314 (1975); and Maywood Ed. Assn., Inc. v. Maywood Bd. of Ed., 131 N.J. Super. 551, 554 (Ch. Div. 1974).

<sup>6/</sup> Once again it must be emphasized that this decision on the negotiability of tenure is not intended to dictate terms or requirements on those areas of tenure already covered by Title 18A of the statutes.

In In re Rutgers, The State University, P.E.R.C. No. 76-13 at p. 13, 2 NJPER 13, 16 (1976), the Commission, in dicta only, classified tenure as a mandatorily negotiable term and condition of employment.



whose contracts are not to be renewed in a reeducation in force pursuant to N.J.S.A. 18A:28-9 and the re-employment rights of such individuals were not required subjects for negotiations, is applicable to the issue involved in this case.

The Board in the instant case is thus required to negotiate with the Union concerning tenure for the within employees.<sup>7/</sup>

Regarding the second point the Union raised in its Petition, i.e. that the employees by virtue of prior contracts have acquired tenure, it is necessary to review and clarify what the Commission does and does not determine in a scope of negotiations proceeding. As established in In re Englewood Board of Education,<sup>8/</sup>

The Commission will not construe the parties' agreement. Rather, it will determine whether the subjects covered by a contractual provision are within the scope of collective negotiations.... disputes concerning the meaning of a given contractual provision are to be resolved by the courts, or, if pertinent, the arbitrator.  
at p. 4.

Relating those comments to the present case, it means that although the Commission has the responsibility to determine whether tenure is a required or permissive or illegal subject for negotiations, the Commission does not, in a scope proceeding, look at an issue such as tenure other than the mere negotiability of that issue nor does it determine whether, in the instant case, the employees have already acquired the same.<sup>9/</sup> That is a decision

<sup>7/</sup> Although the Board, pursuant to N.J.S.A. 34:13A-5.3, is required to negotiate in good faith with the Union regarding terms and conditions of employment, including tenure, that does not necessarily mean that the parties must agree, or adopt each other's position. See Council of New Jersey State College, E.D. No. 79, at p. 10 (1975), aff'd State v. Council of N. J. State College Locals, 141 N.J. Super. 470 (1976).

<sup>8/</sup> P.E.R.C. No. 76-23, 2 NJPER 72 (1976), appeal pending [on unrelated matters] (Appellate Div. Docket No. A-3018-75).

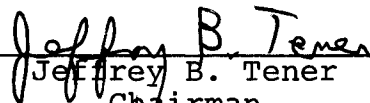
<sup>9/</sup> The parameters of a scope decision were further enunciated by the Commission in In re Hillside Board of Education, P.E.R.C. No. 76-11 at p. 9, 1 NJPER 55, 57 (1975).

that may be made by the parties, or by the courts, or by an arbitrator.

ORDER

With respect to the matter in dispute relating to the negotiability of tenure for tradesmen not covered by the statutes, we hereby determine, in accordance with the above discussion and pursuant to N.J.S.A. 34:13A-5.4(d), that tenure in the context of this case is a required subject for collective negotiations, and the Woodbridge Township Board of Education is hereby ordered to negotiate in good faith regarding tenure for tradesmen upon the demand of the instant Union.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

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

DATED: Trenton, New Jersey  
March 16, 1977  
ISSUED: March 17, 1977