

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW MILFORD BOARD OF EDUCATION,
Petitioner,

Docket No. SN-76-43

-and-

NEW MILFORD EDUCATION ASSOCIATION,
Respondent.

SYNOPSIS

The Executive Director, acting on behalf of the Commission, issues an interlocutory order restraining arbitration during the pendency of a scope of negotiations proceeding. The disputed issue, according to the Board, concerns the subjective evaluation of a teacher by the building principal. The Board contends that the substance of the evaluation, in contrast to the evaluation procedures, are not terms and conditions of employment, and therefore, are not arbitrable. The Executive Director finds that, as the dispute arises under a contract entered into prior to the 1974 amendments to the Act and is thus arguably susceptible to a narrower interpretation concerning arbitrability under pre-amendment case law, and as the Commission has not yet passed upon the issues raised, there is a reasonable basis to restrain the arbitration pending the Commission's ultimate scope determination.

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Appearances:

For the Petitioner, Gerald L. Dorf, P.A. (Mr. Thomas J. Savage, of Counsel and on the Brief).

For the Respondent, New Jersey Education Association (Mr. Vincent Giordano, UniServ Representative).

INTERLOCUTORY DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on May 7, 1976 by the New Milford Board of Education (the "Board"), seeking a determination as to whether certain matters in dispute with the New Milford Education Association (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. The Board indicates in its Petition that the dispute has arisen with respect to matters which the Association has sought to process to arbitration pursuant to the parties' collectively negotiated grievance procedure. The Board has requested the Commission to preliminarily restrain the arbitration during the pendency of the scope proceeding, and submitted a proposed Order to Show Cause with supporting affidavit, and a brief in support of both

the Petition and the instant application for interim restraints.^{1/}

The undersigned has been delegated the authority to act on these matters on behalf of the Commission. Pursuant to that authority, the undersigned has read the Board's Petition and the brief submitted by the Board. The Association, while objecting to the grant of a restraint of arbitration pending a final scope determination, has waived its right to a show cause hearing on the instant application.

The instant dispute has arisen in the context of a grievance filed by the Association on behalf of a teacher employed by the Board with respect to two evaluations of the teacher's performance made March 10, and March 26, 1975 by the teacher's building principal.

The grievance was filed pursuant to a grievance arbitration procedure embodied in a written collective negotiations agreement, to which the Board and the Association are parties, covering the period July 1, 1974 through June 30, 1976.

The Board in its Petition states that the issue raised by the grievance is whether or not portions of the evaluation reports were "erroneous" or "false", thus raising the question as to whether the substance of the evaluation, i.e., the administrator's subjective determination, is a term or condition of

^{1/} Neither party disputes the authority of the Commission to restrain arbitration in such situations. See Board of Education of the City of Englewood v. Englewood Teachers Association, 135 N.J. Super 120, 1 NJPER 34, 90 LRRM 2047 (App. Div. 1975).

employment within the scope of collective negotiations and/or is subject to arbitration.

In making a determination as to whether arbitration should be preliminarily restrained the undersigned will determine whether there is a reasonable basis for the Board's contention that the matter in dispute may be found not to be within the scope of collective negotiations and therefore not arbitrable.^{2/}

The Board argues that the grievance filed by the Association merely manifests a disagreement with the administrator's subjective evaluation and, as such, an attack on the Board's claimed right to pass upon the quality of teacher performance. The Board cites a recent decision of the Appellate Division as support for its position that evaluation determinations fall within the realm of managerial prerogatives.^{3/} However, the Board does concede that evaluation procedures are within the scope of negotiations and cites a provision of the parties' agreement establishing such procedures. See In re Board of Education of the City of Englewood, PERC No. 76-23, 1 NJPER 72 (1976).

The Board's argument is enhanced by the fact that the

^{2/} See, for example, In re Board of Education of the Borough of Tenafly, PERC No. 92, 1 NJPER 50 (1975), In re Board of Education of the City of Englewood, PERC No. 93, 1 NJPER 51 (1975), and In re Ridgefield Park Board of Education, PERC 76-37, 2 NJPER _____ (1976). See also In re City of Jersey City, PERC No. 76-26, 2 NJPER 96 (1976), motion for leave to appeal denied Docket No. AM-496-75 (App. Div., April 27, 1976).

^{3/} Clifton Teachers Association v. Board of Education of Clifton, 136 N.J. Super 336, 1 NJPER 63 (1975).

parties' agreement was entered into prior to the effective date of Chapter 123 of the Public Laws of 1974 and is thus arguably susceptible to a narrower interpretation regarding arbitrability than are agreements postdating Chapter 123.^{4/}

While the undersigned expresses no opinion as to the validity of these arguments, it is clear that they do raise bona fide scope of negotiations issues which to date have not been passed upon by the Commission and the requested restraint will be granted.

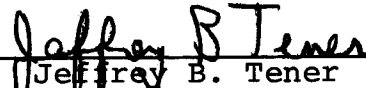
ORDER

For the reasons hereinabove set forth, the New Milford Education Association, its officers, agents, employees, and attorneys and such persons in active concert or participation with them, are hereby preliminarily enjoined and restrained, during the pendency of the instant scope of negotiations proceeding or until further order of the Commission, from proceeding to arbitration with respect to the matters raised in the instant scope of negotiations petition, namely, the grievance filed by the Association with respect to the evaluations of Norma Baum made by Thomas Hoban on March 10, 1975 and on March 26, 1975.

^{4/} In this regard, see the recent Appellate Division decision in Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-76; In re Ridgefield Park Board of Education, supra.

The Association is directed to file its Brief in accordance with the Commission's Rules and in particular N.J.A.C. 19:13-3.3.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
May 25, 1976