

P.E.R.C. NO. 77-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUTHERFORD EDUCATION ASSOCIATION,

Petitioner,

Docket No. SN-76-50

-and-

RUTHERFORD BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Commission permanently restrains the arbitration of a matter in dispute as it was presented in a scope of negotiations proceeding. The Education Association sought a determination as to whether a grievance asserting the right of teachers to resign from, and thus refuse to perform, extra-curricular duties previously assigned by the Board of Education could be submitted to binding arbitration pursuant to a collective negotiations agreement governed by Chapter 303 of the Laws of 1968. The Commission, applying Chapter 303 as construed by the Supreme Court in the Dunellen Trilogy to the facts in this case - the simultaneous resignation of seven teachers from extra-curricular activities more than one month into the school year - holds that the matter cannot be submitted to arbitration.

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Appearances:

For the Petitioner, Goldberg, Simon & Selikoff, Esqs.
(Mr. Theodore M. Simon, of Counsel).

For the Respondent, Parisi, Evers & Greenfield, Esqs.
(Mr. Irving C. Evers, of Counsel).

DECISION AND ORDER

On June 21, 1976 the Rutherford Education Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute between the Association and the Rutherford Board of Education (the "Board") are within the scope of col-
^{1/}lective negotiations.

1/ The Commission's authority to render such determinations is set forth in 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 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 commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." See also, N.J.A.C. 19:13-1.1 et seq. for the Commission's Rules governing these proceedings.

The issues in this case originally arose as a dispute which the Association sought to process pursuant to the grievance/arbitration procedure contained within the parties' July 1, 1974 through June 30, 1976 collectively negotiated agreement. When the grievance was not adjusted in a manner satisfactory to the Association, it attempted to submit the dispute to binding arbitration, the last step in the procedure.

The Board attempted to prevent the Association from proceeding to arbitration by filing a law suit in Superior Court of New Jersey, Chancery Division seeking a permanent restraint of arbitration. By Order dated May 25, 1976, the Honorable George B. Gelman, Judge of the Superior Court denied the request for the restraint of arbitration and directed that the Association make application to this Commission for a scope of negotiations determination of the matter in dispute. Additionally, the order temporarily stayed the arbitration pending an opportunity for the Board to apply to this Commission for a further stay of the arbitration.

The within Petition was then filed by the Association pursuant to the Court's order. Shortly thereafter, on June 24, 1976, the Board applied to this Commission for a temporary restraint of the arbitration pending a final Commission determination of the merits of this matter. This application was accompanied by a supporting affidavit with a copy of Judge Gelman's order attached as an exhibit. The Board submitted a

brief in support of its application for interim restraints.

The Commission has delegated to Jeffrey B. Tener, its full-time Chairman, the authority to consider such applications for interim relief. In the performance of that responsibility he reviewed the allegations of the Petition and the material submitted by the Board. On the basis of this information, he issued an Order to Show Cause with respect to the restraint of arbitration pending the final Commission determination. He also continued the temporary stay of arbitration entered by the Superior Court pending the return date of the Order to Show Cause. Initially the hearing was scheduled for August 5, 1976 but due to a conflict in schedules for the attorneys the matter was postponed until August 30, 1976. Prior to the postponed hearing date the parties agreed to voluntarily continue the temporary stay pending this Commission decision on the merits.

The facts which are essential to the determination of the scope of negotiations question presented by this matter can be gleaned from the Petition and other submissions of the parties. These facts are quite brief and are not in substantial dispute.

At its meeting held on August 11, 1975 the Board assigned certain named teachers to specified extra-curricular activities. These extra-curricular activities included year book advisor, student council advisor, advisor to the visual aids department, stage crew director and certain athletic

advisors. On or about October 13, 1975 seven of the individuals assigned attempted to resign from these extra-curricular appointments. The Board refused to accept the proffered resignations and apparently the individuals did perform the duties associated with the assignments. The Association then filed the grievance underlying this dispute, contending that the Board's refusal to accept the resignations from the extra-curricular positions violated the contract.^{2/}

As previously noted, the grievance was filed and the arbitration is being sought pursuant to the procedure in the parties' collective negotiations agreement covering the period from July 1, 1974 to June 30, 1976. A recent decision of the Appellate Division of the Superior Court has held that contracts entered into prior to the effective date of Chapter 123 of the Public Laws of 1974, which amended this Act, must be interpreted in accordance with the law as it existed under Chapter 303 of the Public Laws of 1968.^{3/}

^{2/} When this controversy arose it also included the issue of the involuntary assignment and subsequent refusal to accept the resignations of the teachers designated to be Department Chairpersons. The actions on August 11 and October 13 included the assigned Department Chairpersons as well as the extra-curricular positions. The law suit filed in this matter also covered the Department Chairpersons. However, the Petition for Scope of Negotiations Determination does not allege any dispute with respect to those positions. In its brief, the Association notes that the matter before the Commission does not involve the department chairpersons and states that it has withdrawn this entire aspect of the dispute and no longer seeks arbitration regarding the department chairpersons. (Footnote 1 page 1 of the Association's brief).

^{3/} Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (decided May 4, 1976, as yet unreported).

Therefore, pursuant to the holding in Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17, (1973), this matter may be submitted to arbitration only if it concerns a mandatorily negotiable term and condition of employment.^{4/}

The Association contends that the Board's refusal to accept the resignations of the teachers from the extra-curricular assignments made those duties involuntary in nature in violation of the parties' agreement. The Association argues that since such extra-curricular activities directly and intimately affect the workload, hours and compensation of the teachers assigned, this dispute must relate to mandatorily negotiable terms and conditions of employment and is therefore arbitrable, even under a Chapter 303 contract.^{5/}

^{4/} In Dunellen the Supreme Court held that disputes concerning matters which are predominantly major educational policy judgments cannot be arbitrated, instead they must be resolved by the Commissioner of Education as a dispute or controversy arising under the Education Law. See N.J.S.A. 18A:6-9.

^{5/} In a brief submitted in reply to the Association's brief, the Board denies that the hours or the amount of work produced by these particular teachers was increased by these particular extra-curricular assignments. It is not clear from the statement in the reply brief whether the Board is referring to an increase relative to the hours and workload of the other teachers in the district or only relative to these terms and conditions as they existed for these particular teachers in the past, when they may have also performed these duties. Such a dispute over the particular facts alleged as constituting the violation of the contract - e.g., were the hours actually increased, etc. - is not relevant to the abstract question of the negotiability of the subject matter of a dispute. (They may be relevant and appropriate for resolution by the arbitrator if a dispute is arbitrable.) With respect to the scope of negotiations question presented herein, it cannot be denied

(Continued)

We have no doubt that the voluntary or involuntary performance of extra-curricular duties does affect these terms and conditions of employment and any dispute relating to workload, hours or compensation would be arbitrable if the parties had agreed to arbitrate such disputes.

However, the dispute, as framed, does not relate to the workload, hours or compensation of the unit members but rather to the right of a teacher who had been assigned such extra-curricular duties to refuse to perform those duties.

On the other hand, the Board argues^{6/} that it is

5/ (Continued) that extra-curricular activities do directly affect hours, workload and compensation - all terms and conditions of employment - even if they did not alter them in this specific situation. Moreover, the Board in its reply briefs concedes, in fact argues, that it offered to negotiate with the Association concerning any claim that the workload of the particular teachers had been increased and points to the salary schedule in the contract which specifies additional compensation for the extra-curricular activities in question as evidence of the fact that it had negotiated with respect to any impact on that particular term and condition of employment. While we express no opinion on whether these arguments by the Board in its brief resolve any factual disputes which may be present, we do note that such an argument supports the proposition that, as a theoretical matter, the assignment of responsibility for extra-curricular activities of students can directly affect terms and conditions of employment.

6/ The Board's initial brief, which was submitted as support for its application for the interim restraint, was the same brief which it had submitted to the Court. Due to this fact, it contains arguments directed to contract arbitrability as well as those addressed to scope of negotiations. We note, as we have in numerous other decisions, that such questions of contract interpretation are for the arbitrator or the courts and not for this Commission in a scope of negotiations proceeding. See In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

the responsibility and prerogative of a board of education to assign teachers to specific educational responsibilities.^{7/}

The Board also cites an unreported Appellate Division decision which holds that the decision of a board of education to appoint one person baseball coach, with the concomitant passing over of another applicant, is a management prerogative not subject to arbitration. Board of Education of the Township of Edison v. Edison Township Education Association, App. Div. Docket No. A-270-74 (December 24, 1975).^{8/}

The Board also relies on numerous decisions of the Commissioner of Education and the courts of several other states for the proposition that an implied obligation of a teacher's contract of employment is the requirement to perform certain duties involving the supervision of and participation in extra-curricular activities of an educational nature sponsored by the school and related to its normal functions in the community. The activities in these cases included supervision

^{7/} See the Township of Ocean decision, supra, in which the Court held on the merits of the case that the involuntary transfer of teachers from one school to another within the district was a managerial prerogative not subject to arbitration under a Chapter 303 contract. It should be noted, however, that this case dealt with transfer of the teachers' normal workday responsibilities and, not the assignment of extra-curricular duties.

^{8/} This case also appears to have arisen under a Chapter 303 contract. Additionally, the Court cites several contract clauses from which it determines that the contract intended to reserve this decision to the board of education.

of athletic events, advisor to student activities such as the school paper, student government and other similar responsibilities.

The performance of such extra-curricular duties is a part of the professional responsibilities of teachers. Boards of education must be able to insure that students are properly supervised and properly trained in the skills which are involved in the various extra-curricular activities sponsored by the schools.

Given the fact that this dispute arose under a Chapter 303 agreement, it is incumbent upon us to analyze the dispute in accordance with the provisions of Chapter 303 as construed by the Supreme Court in the Dunellen trilogy.^{10/} Essentially, the Court determined that only those items which are not predominantly educational policies and which directly affect the financial and personal welfare of employees may be submitted to arbitration. Utilizing that standard, we believe that the arbitration of a dispute such as the instant one would not have been permitted.^{11/}

Therefore, on the facts in this case, we determine

^{10/} Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); The Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973); Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973).

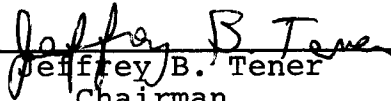
^{11/} The simultaneous resignation of seven teachers from extra-curricular activities over one month into the school year imposes too great a burden on the Board's ability to carry out its function, and that fact convinces us that this dispute is one which cannot be submitted to arbitration in the context of a Chapter 303 contract.

that the Board could not have legally agreed to submit the instant dispute to arbitration.^{12/}

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, arbitration of the instant dispute is hereby permanently restrained.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Commissioner Hartnett was not present.
Chairman Tener and Commissioner Parcels voted for this Decision.
Commissioner Forst abstained.
Commissioners Hipp and Hurwitz did not participate in this matter.

DATED: Trenton, New Jersey
October 19, 1976
ISSUED: October 20, 1976

12/ We are not presented with, and we do not decide, whether a board of education may legally agree in a Chapter 123 contract to submit such a dispute to arbitration.