

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

Docket No. SN-76-29

- and -

RIDGEFIELD PARK 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 issues concern various aspects of a professional development and evaluation program adopted by a local board of education, and which the local board contends reflects major educational policy decisions in furtherance of its responsibility, derived from the State Constitution, to provide for a thorough and efficient system of free public schools. 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, Grotta, Glassman & Hoffman, Esqs. (Mr. Lester Aron, of Counsel and on the Brief)

For the respondent, Goldberg, Simon and Selikoff, Esqs. (Mr. Theodore M. Simon, of Counsel)

For New Jersey School Boards Association, Amicus Curiae, William J. Zaino, Esq. and John T. Barbour, Esq. (Mr. Barbour, of Counsel and on the Brief)

INTERLOCUTORY DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on December 18, 1975 by the Ridgefield Park Board of Education (the "Board"), seeking a determination as to whether certain matters in dispute with the Ridgefield Park 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 briefs submitted by the Board and by the New Jersey School Boards Association, the latter having been granted leave to intervene as amicus curiae. 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 Board developed and adopted the "Ridgefield Park Professional Development and Evaluation Program" (the "Program"). The Program is divided into five basic sections: (1) Board Policy Statement for Teacher Evaluation, 2) District Goals, 3) Index for Teacher Effectiveness, 4) Summative Evaluation, and 5) Formative Evaluation. In its Petition and brief the Board maintains that the first three sections involve matters of major educational policy and it resists any attempt to submit to arbitration the matters contained therein. The Board does not seek a scope determination or a restraint with respect to the final two sections of the Program, stating that they relate primarily to the procedural aspects of evaluating the teachers within the district and apparently conceding that they are thus required subjects for collective negotiations.

The Board and the Association are parties to a collective negotiations agreement covering the period from July 1, 1974 to June 30, 1976. Article

^{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 2074 (App. Div. 1975).

IV of the agreement is a grievance procedure culminating in binding arbitration. It remains to determine whether arbitration should be preliminarily restrained on those matters contained within the first three sections of the Program. In making such a determination the undersigned will determine whether there is a reasonable basis for the Board's contention that the matters in dispute may be found not to be within the scope of collective negotiations and therefore not arbitrable.^{2/}

Both the Board and the Amicus argue that the matters contained within the first three sections of the Program reflect major educational policy decisions of the Board outside the scope of collective negotiations which are, therefore, not arbitrable. This argument is enhanced by the fact that the parties' agreement was apparently 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 post-dating Chapter 123. Additionally, both briefs argue strenuously that the Board's adoption of the Program was in furtherance of the Board's responsibility to provide for a "thorough and efficient" system of free public schools in Ridgefield Park. As such, it is argued, the substantive matters contained therein have been elevated beyond normal educational policy to matters of constitutional dimension. (See New Jersey Constitution (1947) Article 8, Section 4, paragraph 1; and the Public School Education Act of 1975, N.J.S.A. 18A:7A-1 et seq [P.L. 1975, c. 212].) 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.

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

In order to provide the Commission with a clear delineation of the issues presented, the Association is directed to set forth in its respondent's brief exactly those aspects of the first three sections of the Program which it seeks to arbitrate, and why it believes them to be within the scope of collective negotiations. It should also state, with reasons, whether it feels those aspects are procedural or substantive in nature. If the Association believes, rather, that the first three sections in their entirety are arbitrable, it should so state, together with its reasons. Finally, the Association should address itself to the arguments referred to above relating to the constitutional and statutory basis for the Board's action, and to the fact that this dispute has apparently arisen under a pre-Chapter 123 agreement.^{3/} The Association's brief shall be served and filed pursuant to N.J.A.C. 19:13-3.3 by June 4, 1976. The Board and the Amicus may thereafter respond in their reply briefs, if any, to be served and filed pursuant to N.J.A.C. 19:13-3.3 within ten days after service of the Association's brief.

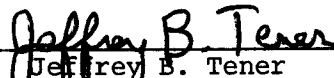
ORDER

For the reasons hereinabove set forth, the Ridgefield Park 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, sections 1, 2 and 3 (Board Policy Statement for Teacher Evaluation; District Goals; Index for Teacher Effectiveness) of

^{3/} With regard to this latter point the parties' attention is directed to the recent Appellate Division decision in Board of Education of the Township of Ocean v. Township of Ocean Teachers' Association, Docket No. A-3334-74, decided May 5, 1976.

the Ridgefield Park Professional Development and Evaluation Program adopted by the Ridgefield Park Board of Education. Briefs are to be filed as hereinabove set forth, unless an extension of time is requested and granted pursuant to the Commission's Rules.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
May 13, 1976