

P.E.R.C. NO. 2002-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUMSON-FAIR HAVEN REGIONAL
HIGH SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-43

RUMSON-FAIR HAVEN REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Rumson-Fair Haven Regional High School Board of Education for a restraint of binding arbitration of a grievance filed by the Rumson-Fair Haven Regional Education Association. The grievance concerns alleged violations of contractual provisions concerning the process for evaluating teachers. The Commission finds that the Board has not raised a negotiability issue and that its only argument is that the issues in the grievance were resolved in an unfair practice settlement. The Commission concludes that there is no basis for a scope of negotiations determination.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Reusille, Mausner, Carotenuto, Barger
& Steel, L.L.C., attorneys (Martin M. Barger, on the
brief)

For the Respondent, New Jersey Education Association
(Marc D. Abramson, UniServ Field Representative, on the
brief)

DECISION

On March 15, 2002, the Rumson-Fair Haven Regional High School Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Rumson-Fair Haven Regional Education Association. The grievance concerns alleged violations of contractual provisions concerning the process for evaluating teachers.

The parties have filed letter briefs and exhibits. These facts appear.

The Association represents teachers, clerical employees, custodians and cafeteria workers. The Board and the Association

are parties to a collective negotiations agreement effective from July 1, 1998 through June 30, 2001. The grievance procedure ends in binding arbitration.

Article 7 is entitled Employee Evaluation; Employee Rights. Section 7.1 provides:

Among the purposes of teacher evaluation is to effect continual, professional growth. As in the past, all monitoring of the work performance of a teacher shall be conducted openly. Teaching staff members shall be evaluated only on the basis of total teaching performance by persons certified by the State Board of Examiners to supervise instruction. There shall be annually up to four formal evaluations, two per semester, together with mandated pre-evaluation conferences (where the focus of the evaluation will be determined) and post-evaluation conferences, for non-tenured teaching staff members. There shall be annually up to three (3) formal evaluations, together with pre-evaluation conference (where the focus of the evaluation will be determined) and post-evaluation conferences, for tenured teacher staff members.

Section 7.3 provides:

Any complaint regarding an employee made to any member of the administration by any parent, student, or any other person of which notation is placed in the file shall be promptly called to the attention of the employee. The employee shall be given an opportunity to respond to and/or rebut such complaint and shall have the right to be represented by the Association at any other meetings or conferences regarding such complaint at which disciplinary action may be contemplated by the administration.

Mary Anne DeSocio is a tenured science teacher in the high school. She received her annual evaluation on June 1, 2001. The evaluation was revised on June 13 and June 18.

On June 28, 2001, the Association filed a grievance. It stated:

On, or about, June 1st, June 15th, and June 18th, Mrs. Mary Anne DeSocio received her summative evaluation, and subsequent revised evaluations, the contents of which contained statements that were violative of Sect. 7, Articles 1 and 3 and of Section 21, Article 2 of the current agreement between the R-FH Board of education and the R-FH SEA. Therefore, the SEA, pursuant to Article 3 submits the above matter as a grievance, and contends that the action noted above intimately affects Mrs. Mary Anne DeSocio's terms and conditions of employment.

The superintendent denied the grievance. He stated that evaluation procedures and contract provisions were adhered to.

On July 27, 2001, the Association filed an unfair practice charge alleging that the Board violated the New Jersey Employer-Employee Relations Act with respect to DeSocio's evaluation. The Association alleges that the Board's revising DeSocio's evaluation after each post-evaluation conference interfered with, restrained and coerced DeSocio in exercising her rights under the Act.

On October 18, 2001, the parties entered into a settlement agreement on the unfair practice charge. Under the agreement, the Board would remove the second revised annual evaluation from DeSocio's file, the action plans dated June 21 and June 28 would no longer be effective, the first revised evaluation dated June 13 would be revised, and the Association would withdraw

the unfair practice charge. With respect to the Association's grievance, the agreement stated:

5. By entering into this Agreement, neither party admits to any wrong doing. Moreover, settling this unfair practice charge in no way compromises Association's right and ability to pursue the related grievance previously filed and currently at the 2nd step of the grievance process.

On November 13, 2001, the Board denied the grievance. On December 20, 2001, the Association demanded arbitration. This petition ensued.

The Board states that the unfair practice settlement agreement addressed all issues in the grievance and that it does not know what the Association seeks to arbitrate. It states that it cannot defend a "phantom issue" and that arbitration should be permanently restrained.

The Association responds that the settlement agreement clearly states that entering into the agreement in no way compromises its right to pursue the related grievance. The Association asserts that since no negotiability issue has been raised, our scope of negotiations jurisdiction is not implicated and the petition should be dismissed.

There is no basis for a scope of negotiations determination. The boundaries of our scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

The Commission is addressing the abstract issue: is the subject matter in dispute within

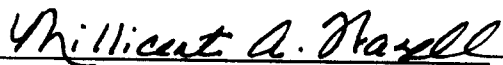
the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. Id. at 154.

The Board has not raised a negotiability issue. Its only argument is that the issues in the grievance were resolved in the unfair practice settlement and it does not know what the Association is seeking to arbitrate. Accordingly, we decline to restrain binding arbitration.

ORDER

The request of the Rumson-Fair Haven Regional High School Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner McGlynn was not present. None opposed.

DATED: May 30, 2002
Trenton, New Jersey
ISSUED: May 31, 2002