

I.R. NO. 87-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TOMS RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-87-19

TOMS RIVER EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee denies the request by the Toms River Board of Education for a temporary restraint of arbitration. The Toms River Education Association seeks to arbitrate the School Board's failure to follow promotional procedures contained in the collective negotiations agreement. The School Board claimed that the denial of the grievant's promotion to Learning Disability Teaching Consultant is a matter of managerial prerogative and, is neither negotiable nor arbitrable. However, the Designee found that the issue here is about the application of procedures contained in the negotiated agreement and not the substantive decision about promotion and these are proper subjects for arbitration.

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Appearances:

For the Petitioner
James L. Rigassio

For the Respondent
Starkey, Kelly, Blaney & White
(James M. Blaney of counsel)

INTERLOCUTORY DECISION

On October 20, 1986 the Toms River Board of Education ("Board") filed a Scope of Negotiations Petition seeking a permanent restraint of arbitration from the Public Employment Relations Commission ("Commission"). In addition, it requested an interim stay of the arbitration pending a final Commission decision in this matter. The arbitration proceeding was initiated by the Toms River Education Association ("Association"). The underlying grievance alleges that the Board failed to follow promotional procedures contained in the collective negotiations agreement. Specifically, the grievance asserts that the Board violated Article XIII A.1. of the contract, which provides for continual consideration of

promotional applications for one year from the date of initial application.

Walter Donovan, a member of the teaching staff of the Toms River School System applied for the position of Learning Disability Teaching Consultant in September 4, 1985. An opening in this position opened within one year. When an inquiry was made as to why Mr. Donovan was not hired, he was informed that the reason he did not get the position was because he did not apply.

The Board's position is that the denial of the grievant's promotion to Learning Disability Teaching Consultant is a matter of managerial prerogative and, as such, is neither negotiable nor arbitrable. The Board supports its position by reference to Article III B.7.d of the collective negotiations agreement (matters limited to action by Board alone are not arbitrable); and N.J.S.A. 18A:27-4 which provides that Boards of education have authority to make rules governing the employment, promotion and dismissal of teaching staff.

The issue here is whether the Board violated a procedure contained in the collective negotiations agreement when it did not consider the grievant's application for promotion, and not, as the Board argues, whether the Board was wrong in not selecting the grievant for the promotional position. The grievance states:

"The reasons listed by the Superintendent explaining the Board's failure to reappoint Mr. Donovan to the position of Learning Disability Teacher Consultant are themselves violative of provisions of the contract...among other violations, the grievant cites the following contract provisions: Article II-F, Article III,

Article XIII-A-1"

Further, in its brief the Association acknowledges that the decision to promote an applicant to Learning Disability Teacher Consultant is preeminently a policy determination and beyond the scope of negotiations or binding arbitration.

The Commission's scope of negotiations jurisdiction is narrow.

In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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]

Thus, my decision here will not address the merits of the Association's grievance or the Board's contractual defenses.

It is undisputed that substantive decisions about promotions are policy determinations beyond the scope of negotiations or binding arbitration. State v. State Supervisory Employees Association, 78 N.J. 54 (1978). However, it is well settled that procedures used in the promotional decision-making process are negotiable. In State v. State Troopers NCO Ass'n. of

New Jersey, Inc., 179 N.J. Super 80 (App. Div. 1981) the court held that proposed contract provisions involving promotional procedures are mandatory subjects of negotiation rather than inherent management prerogatives. That case concerned such procedures as vacancy announcement requirements and order of selection from a list of eligible applicants. See also, Newark Bd. of Ed. v. Newark Teachers Union, 5 NJPER 283 (1979).

The issue here is about the application of procedures contained in the negotiated agreement. Such procedures are negotiable under the holdings cited above and are proper subjects for arbitration. Here, the arbitrator is limited to considering whether the contractual procedures in the grievance were violated before the Board made its decision not to promote the grievant.

I find the standards for interim relief: irreparable harm, substantial likelihood for success on the merits, and the relative hardship to the parties do not favor the relief sought.

Accordingly, the application for interim relief is denied.

This is an interim order only as this matter will be referred to the Commission for a final decision.



Edmund G. Gerber
Commission Designee

DATED: January 13, 1987
Trenton, New Jersey