

I.R. NO. 93-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-49

MIDDLETOWN TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Middletown Township Board of Education filed a Scope of Negotiations Petition seeking to restrain the arbitration of a grievance brought by the Middletown Township Education Association. The Board abolished the position held by the secretary and re-assigned her to a newly created position at the same level of pay. The grievance contends that the Board cannot abolish the old position and assign the employee to a new position before she had an opportunity to exercise her seniority rights. The Board concedes that seniority for secretaries is negotiable, it nevertheless argues that arbitration must be restrained since the contract is silent as to seniority for secretaries.

The Commission has no authority to restrain arbitration on contractual grounds. It can only restrain arbitration on the abstract issue of whether the subject matter in dispute concerns a negotiable subject. Since seniority for secretaries is negotiable, the Application was denied.

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Appearances:

For the Petitioner
Kalac, Newman, Lavender & Campbell, attorneys
(Howard M. Newman, of counsel)

For the Respondent
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Kenneth I. Nowak, of counsel)

INTERLOCUTORY DECISION

On December 16, 1992, the Middletown Township Board of Education filed a Scope of Negotiations Petition with the Public Employment Relations Commission seeking to restrain the arbitration of a grievance brought by the Middletown Township Education Association. An arbitration hearing is set for January 4, 1993. A proposed order to show cause was filed with the scope petition seeking a temporary restraint pending a final Commission decision. The order was executed and made returnable for, and was heard on, December 29, 1992.

The grievance concerns the alleged contractual seniority

rights of a secretary employed by the Board. The Board abolished the position held by the secretary and re-assigned her to a newly created position, though at the same level of pay. The secretary claims she has certain seniority rights and the Board could not abolish her position or assign her to the new position before she had an opportunity to exercise her seniority rights.

Although secretaries employed by a board of education have tenure rights under Title 18A, such tenure for secretaries does not convey any seniority rights.

The Board concedes that, in the abstract, seniority is negotiable, it nevertheless argues arbitration here must be restrained. Nothing in the agreement between itself and the Association grant seniority to secretaries and, since the grievant has neither contractual nor statutory seniority, if the Commission permits this matter to go to arbitration the Association may win a benefit, seniority for secretaries, which was never bargained for.

The Association argues that the contract does confer seniority rights upon secretaries and, moreover, once it is shown that a matter is negotiable, PERC's role is over. Its function in a scope of negotiations petition is limited to determining if a matter is negotiable.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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 is a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of the grievance or any defenses the Board may have.

Accordingly, the determination sought by the Board is apparently beyond the Commission's jurisdiction in a scope proceeding. I do not believe the Commission will address the issue raised by the Board.

The Board has not met its heavy burden and shown it has a substantial likelihood of success in this matter. Its application for an interim restraint of arbitration is denied.



Edmund G. Gerber
Commission Designee

DATED: December 30, 1992
Trenton, New Jersey