

E.D. No. 76-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
CITY OF TRENTON,

Petitioner,

Docket No. SN-76-27

- and -

TRENTON ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

In an interlocutory decision the Executive Director, acting as the Commission's named designee, refuses to stay the arbitration of a grievance during the pendency of a scope of negotiations proceeding in which the matter in dispute involves the involuntary transfer of employees. The Executive Director states that there is no reasonable basis to determine that the involuntary transfer of employees is an illegal subject of negotiations. Thus, the matter is arbitrable if otherwise arbitrable under the parties' agreement.

The Executive Director further notes that his authority to grant restraints is derived completely from the Commission and extends only to determinations relating to negotiability. Questions of contract arbitrability are for the Courts and/or the arbitrator and not the Commission, and requests for restraints based on contract arbitrability must be directed to the Courts and not the Commission or its named designee.

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INTERLOCUTORY DECISION

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission by the Board of Education of the City of Trenton (the "Petitioner") on December 8, 1975, requesting a determination as to whether a matter in dispute between the Trenton Administrators and Supervisors Association (the "Respondent") and the Petitioner is within the scope of collective negotiations. The Petitioner alleges in its Petition that the Respondent has sought arbitration of the same matter pursuant to the collectively negotiated grievance procedure contained in the parties' agreement which is currently in effect. The Petitioner attached to the Petition a copy of a letter from the American Arbitration Association setting December 18, 1975 for the arbitration hearing and requested that the arbitration be stayed during the pendency of the scope proceeding. See Board of Education of the City of Englewood v. Englewood Teachers Association, 135 N. J. Super 120 (App. Div.), 1 NJPER 34 (1975).

The undersigned has been delegated the authority to act on such requests for stays of arbitration on behalf of the Commission. The ultimate administrative decision on the merits of the dispute in scope of negotiations proceedings still rests with the Commission itself, see N.J.A.C. 19:13-3.7, and a determination to stay or not stay arbitration pending the Commission's final decision is in no way dispositive of the issue. The function of the undersigned is limited

to a determination as to whether there is any reasonable basis for the contention of the requesting party that the matter(s) in dispute may be found not to be within the scope of collective negotiations and therefore not arbitrable. Board of Education of the Borough of Tenafly and Tenafly Education Association, P.E.R.C. No. 92 (1975), 1 NJPER 50, 51 (1975); City of Englewood Board of Education and Englewood Teachers Association, P.E.R.C. No. 93 (1975), 1 NJPER 51, 52 (1975); Hunterdon County Board of Chosen Freeholders and Hunterdon County Council #15, N.J.C.S.A. E. D. No. 76-9, pg. 2 (1975).

Such a "reasonable basis" will be found to exist "when a bona fide scope of negotiations question has been presented to the Commission for determination." Ibid.

It should be pointed out, however, that the undersigned derives his complete authority from the Commission. Therefore, the undersigned limits his inquiry in a request for a stay of arbitration to the same matters that the Commission will consider in its ultimate consideration of the merits of the dispute. In Hillside Board of Education and Hillside Education Association, P.E.R.C. No. 76-11, 1 NJPER 55, at 57 (1975) the Commission noted that in scope of negotiations proceedings it is addressing only the abstract issue: Is the subject matter in dispute within the scope of collective negotiations?

The Commission's ultimate order in this type of case, i.e. a scope proceeding arising in the context of a request to proceed to arbitration pursuant to an existing contract, assumes that the matter is otherwise arbitrable under the parties' agreement. The Commission states in the Hillside decision:

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, ...is not to be determined by the Commission in a scope proceeding. These are questions appropriate for determination by an arbitrator and/or the Courts. Hillside, 1 NJPER 55, 57.

Since the authority of the undersigned cannot be more extensive than the authority of the Commission itself, any stay of arbitration determination must also be limited to the abstract question of scope of negotiations. A stay of arbitration request, based on questions of contract arbitrability, must be addressed to the Courts, not the Commission or its named designee. See Hunterdon County, supra.

Pursuant to the Rules of the Commission a particular matter in dispute could be found to be either a required, permissive or illegal subject for collective negotiations. N.J.A.C. 19:13-3.7.^{1/} However, for the

^{1/} A required subject of negotiations is a matter which is a term and condition of employment and therefore a matter which must be negotiated if demanded by either party. N.J.S.A. 34:13A-5.3. An illegal subject is one which is outside the scope of collective negotiations because it would be illegal for the parties to negotiate concerning it. They do not have the authority to alter the subject matter through their collective negotiations. A permissive subject is one which is neither illegal nor required. Therefore, if a party chooses not to negotiate upon it, the other party cannot require that it be negotiated, but conversely, if it is raised the parties are

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purposes of a determination of whether to stay an arbitration proceeding or allow it to go forward it is only necessary to decide if the matter is an illegal subject or not. If it is either a permissive or required subject of negotiations, then it is arbitrable, if otherwise arbitrable, under the parties' agreement. If it is an illegal subject of negotiations it was illegal for the parties to have negotiated concerning it in the first place and thus illegal for them to submit it to the arbitrator.

The matter in the within petition presents such a case. According to the Association, the contract pursuant to which arbitration is sought covers the term July 1, 1974 through June 30, 1976 and was ratified by the parties January 23, 1975. The dispute concerns the involuntary transfer of one of the unit members from one school to another. The Respondent has attempted to grieve the transfer pursuant to a provision of the parties' agreement which allegedly covers such transfers and provides that they are subject to the grievance procedure. For the purposes of this determination it is enough to decide that there is no reasonable basis to determine that the involuntary transfer of employees is an illegal subject of negotiations. It can therefore be anticipated that it will be found to be at least within the permissible scope of collective negotiations, and thus arbitrable, if otherwise arbitrable under

1/ (Continued)

permitted to negotiate upon it and reach agreement if they can, and that agreement, incorporated in the contract, is enforceable as part of the contract. See Board of Education of the Borough of Fair Lawn and Fair Lawn Administrative and Supervisory Association, Local 34, SASOC, AFL-CIO, P.E.R.C. No. 76-7, 1 NJPER 47, 49 (1975).

the parties' agreement.

The request for a stay of arbitration is denied.



Jeffrey B. Tener
Executive Director

DATED: December 15, 1975
Trenton, New Jersey