

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EASTERN CAMDEN COUNTY REGIONAL  
BOARD OF EDUCATION,

Petitioner,

Docket No. SN-80-115

-and-

EASTERN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Chairman denies the request of the Board for a permanent stay of arbitration. The issue in dispute relates to the placement of a teacher on the salary guide. This is a compensation issue which in accordance with prior Commission decisions, is a mandatorily negotiable term and condition of employment.

P.E.R.C. NO. 80-158

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Appearances:

For the Petitioner, Farr, Reifsteck & Wolf, Esqs.  
(Mr. John A. Almeida, of Counsel)

For the Respondent, Selikoff & Cohen, P.A.  
(Mr. Steven R. Cohen, of Counsel)

DECISION AND ORDER

On March 14, 1980 the Eastern Camden County Regional Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a matter in dispute between the Board and the Eastern Education Association ("Association") was within the scope of collective negotiations and therefore legally arbitrable. The parties agreed to suspend the relevant arbitration proceeding pending a decision on this Petition. The Board and the Association filed briefs concerning their respective contentions in this matter, all of which were received by May 5, 1980.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the Chairman the authority to issue scope of nego-

tiations decisions when the negotiability of the issue(s) in dispute has been previously determined by the Commission and/or the State judiciary.

The relevant facts in this matter are not in dispute. Elizabeth O'Neill is a teacher represented by the Association. When she first applied for employment with the Board, she indicated on her application that she had four years prior teaching experience. She was hired, however, at the first step of the salary guide. The Association filed a grievance on her behalf on or about November 1979 charging a violation of Article IX(C) (2) of the parties' agreement under which she was hired. That Article states:

Credit up to the maximum step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in an accredited school upon initial employment....

Following denial of the grievance, the Association filed a demand for arbitration but, as stated before, agreed voluntarily to a stay of the arbitration pending a determination by the Commission as to the negotiability of the disputed provision.

In their respective submissions the Board and the Association in part discuss the effect the following statute (N.J.S.A. 18A:29-9) may have in this particular proceeding:

Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, the initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing Board of Education.

The Board contends that the right to hire a teacher at a salary level agreed upon by that teacher and board representatives involves, by the very nature of the decision, an inherent managerial prerogative, by virtue of N.J.S.A. 18A:29-9 an expressed delegation of managerial authority to the Board of Education. Assuming arguendo that N.J.S.A. 18A:29-9 is categorized as relating to a mandatorily negotiable term and condition of employment, i.e. initial placement on a salary schedule, the Board contends that this statute is a specific statute relating to a term and condition of employment, as defined in the Supreme Court decision, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), and that it was illegal for the parties to negotiate Article IX(C)(2) of the present agreement since that article contravenes the prescriptions of N.J.S.A. 18A:29-9.

The Association in its brief states that it is uncontroverted that absent specific preemptive legislation the initial placement of teachers on a salary schedule based on their prior teaching experience is a mandatorily negotiable subject. The Association submits that the Board has erred in its reading of the State Supervisory Employees Assn decision. The Association maintains that it is not enough that a statute speak in the imperative; to remove a term and condition of employment from negotiations, that statute must also remove all discretion from a public employer. The Association submits

that N.J.S.A. 18A:29-9 leaves much discretion to local boards of education concerning the initial placement on the salary guide of an incoming teacher and that negotiations, upon demand, must take place on this compensation issue. Alternatively, the Association asserts that insofar as N.J.S.A. 18A:29-9 may sanction a process of individual negotiations between new teachers and a board of education it is antithetical to the basic purpose of the New Jersey Employer-Employee Relations Act.

After careful consideration of the parties' submissions and pertinent Commission and judicial decisions, the Chairman concludes that Article IX(c)(2) relates to the placement of a newly hired teacher on a salary guide; a compensation issue which can be resolved through the utilization of the negotiated grievance arbitration mechanism. In a Commission decision In re East Orange Board of Education, P.E.R.C. No. 77-60, 3 NJPER 126 (1977), the Commission concluded that the first step of the teachers' salary guide, usually occupied by newly hired teaching personnel, was a mandatory subject for collective negotiations. The Commission in that decision cited the New Jersey Supreme Court decision Board of Ed. of the City of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973) in partial support of its decision in the East Orange matter. The Court noted, in pertinent part, that the Englewood Board of Education's unilateral denial of tuition reimbursement being sought by a teacher as well as his application for placement on a certain step of a salary guide related to contract inter-

pretations which "...would directly and most intimately affect the employment terms and conditions of the ...[individual] involved without affecting any major educational policies." Id. at p. 8. The Court further noted that "[s]urely working hours and compensation are terms and conditions of employment within the contemplation of the Employer-Employee Relations Act. [These] matters along with physical arrangements and facilities and customary fringe benefits would appear to be the items most evident in the legislative mind." Id. at pp. 6 and 7.

In a subsequent Commission decision, In re Cinnaminson Twp. Board of Education, P.E.R.C. No. 78-46, 4 NJPER 79 (¶4039 1978), aff'd in part, rev'd in part, App. Div. Docket No. A-2682-77 (§/1/79), pet. for certif. den. 81 N.J. 341 (1979), the Commission specifically considered the issue of the potential preemptive effect of N.J.S.A. 18A:29-9 on the negotiability of the initial placement on the salary guide. The Commission determined that N.J.S.A. 18A:29-9 did not preempt negotiations concerning the placement on a salary guide of re-employed teachers who had been the subject of a reduction in force decision. The Commission in that matter clearly considered N.J.S.A. 18A:29-9 as being a general statute that could accommodate negotiations between a board of education and an employee organization concerning the issue of placement on a teachers' salary guide.<sup>1/</sup>

<sup>1/</sup> Subsequently, the Appellate Division reversed the Commission's decision in Cinnaminson, but relied exclusively on its conclusion that procedural matters dealing with recall and retention rights of RIFed teachers are illegal subjects of collective negotiations in setting aside the Commission's decision on that issue.

The undersigned concludes that statutes such as N.J.S.A. 18A:29-9, which was enacted into law in 1958, nearly 10 years before the passage of the New Jersey Employer-Employee Relations Act, must be read in para materia with subsequent enactments. The undersigned's reading of the State Supervisory Employees Ass'n decision mandates a conclusion that N.J.S.A. 18A:29-9 cannot be read so as to preempt any negotiations concerning the placement on a salary guide of a newly hired teacher.<sup>2/</sup>

Separate and apart from the statutory interpretation issue, there are significant policy reasons why negotiations concerning placement of teachers on a salary guide should be mandatorily negotiable. To read N.J.S.A. 18A:29-9 as the Board does would enable a board of education and individual teachers to ignore the basic parameters of a salary schedule and arguably to place inexperienced first or second year teachers on higher steps of the salary guide than teachers who have been employed within the school district for many more years. This procedure could be extremely destructive in terms of its impact on the negotiations process and inconsistent with the harmony and stability the Act is designed to provide and would encourage the process of individual negotiations which directly conflicts with the philosophy of collective negotiations underlying the Act.<sup>3/</sup>

2/ The Commission has issued another decision on this date, In re Dennis Township Board of Education, P.E.R.C. No. 80- , 6 NJPER (¶ 1980), which disposes of a similar issue concerning the negotiability and arbitrability of the placement on a salary guide of a newly hired teacher.

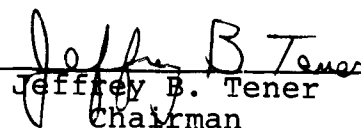
3/ See Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970) and Red Bank Reg. H.S. Board of Education v. Red Bank Reg. Education Ass'n, 78 N.J. 122 (1978).

One additional comment is in order at this time. The Board argues in part that the enforcement of Article IX(C)(2) would restrict the Board's ability to hire teaching personnel. The undersigned does not find that the issue of negotiations concerning initial placement on a guide in any way interferes with the Board's managerial authority to hire teaching personnel. The Association concedes in its submission that Article IX(C)(2) does not guarantee employment by the district for any applicant, nor does it impinge on the Board's discretion to select personnel for teaching positions. The Association maintains and we find that the enforcement of this provision would simply require that a board of education pay a newly hired but more experienced teacher in accordance with the contract provisions negotiated by the parties concerning initial placement or the salary schedule in effect.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Eastern Camden County Regional Board of Education's request for a permanent stay of arbitration of the grievance relating to the placement on a teachers' salary guide is denied. The grievance relating to this issue may proceed to arbitration if otherwise arbitrable under the parties' agreement.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
June 25, 1980