

P.E.R.C. NO. 2016-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE-OPERATED  
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2015-034

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Paterson State-Operated School District's request for a restraint of binding arbitration of a grievance filed by the Paterson Education Association. The grievance challenges the District's failure to timely notify transferred staff members that they would be transferred during the 2013-14 school years. The Commission holds that an alleged violation of a contractual notice provision is mandatorily negotiable.

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, Robert E. Murray, LLC, attorneys  
(Robert E. Murray, of counsel)

For the Respondent, Sasha Wolf, NJEA UniServ  
Representative

DECISION

On November 5, 2014, the Paterson State-Operated School District (District) filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Paterson Education Association (Association). The grievance asserts that the District violated the parties' collective negotiations agreement (CNA) when it failed to notify transferred staff members by August 1, 2013 that they would be transferred during the 2013-14 school year.

The Board has filed briefs and exhibits. The Association has filed a brief, exhibits, and the certification of Association 2nd Vice-President Gene Harvell (Harvell). These facts appear.

The Association represents a negotiations unit of District employees including those in instructional certificated positions. The Board and Association are parties to a CNA effective from July 1, 2014 through June 30, 2017. The grievance procedure ends in binding arbitration.

Article 13 of the CNA is entitled "Employee Assignment Promotion, Transfer and Reassignment." Article 13:1-2 provides:

**13:1-2 Transfer/Reassignments - 10  
Month Employees**

All ten month employees affected by transfers or reassignments shall be notified in writing and by mail no later than August 1.

Harvell certifies that the intent of Article 13:1-2 is to provide transferred classroom employees time to move materials from one location to another and set up their new classrooms for the upcoming school year. In August of 2013, twenty-seven (27) 10-month employees of the District received notices of transfer for the 2013-14 school year (Association Exhibit A).

On September 12, 2013, the Association filed a grievance asserting that the District violated the CNA when it transferred unit members after August 1, 2013. As relief, the Association sought monetary compensation for each affected employee based on the number of days after August 1st that the notices of transfer were late, as well as release time and personal time for employees transferred after the beginning of the school year. On

September 23, 2013, the District denied the grievance. This petition ensued.

Following the District's filing of this petition, the parties proceeded to the arbitration hearing on November 17, 2014. Harvell certifies to the following regarding the Association's requested remedies:

At the hearing, the Association represented to the District and the Arbitrator that the only remedy sought will be a ruling the District violated the Agreement when it failed to notify tenth [sic] month employees of transfer or reassignment by August 1, 2013. The Association specifically stated it would not ask the arbitrator to rescind the transfers.

The Commission's inquiry on a scope of negotiations petition is quite narrow. We are addressing a single issue in the abstract: whether the subject matter in dispute is within the scope of collective negotiations. The merits of the union's claimed violation of the agreement, as well as the employer's contractual defenses, are not in issue, because those are matters for the arbitrator to decide if the Commission determines that the question is one that may be arbitrated. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject

has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405]

The District asserts that arbitration must be restrained because it has a managerial prerogative to transfer certificated staff regardless of whether the transfers are made during the course of the academic year. It argues that because it has such non-negotiable managerial prerogative to transfer or reassign staff for non-disciplinary, non-discriminatory reasons at any time, it cannot be required to notify staff of a transfer by August 1st as set forth in the CNA.

The Association concedes that the District's decision to transfer staff is a managerial prerogative, but asserts that the Commission has long held that the procedures related to transfers and reassignments are mandatorily negotiable. It argues that because it does not seek reversal of the District's transfer decisions, arbitration over compliance with the CNA's notice provision does not significantly interfere with the District's non-negotiable transfer and reassignment decisions.

Teacher assignments and transfers are managerial prerogatives beyond the scope of negotiations. Ridgefield Park. However, consistent with pertinent Commission and judicial precedent, procedural provisions - e.g., prior notice and an opportunity to be heard - relating to a school board's teacher transfer decisions are mandatorily negotiable and hence arbitrable. Rockaway Tp. Bd. of Ed. and Rockaway Tp. Ed. Ass'n, P.E.R.C. No. 90-107, 16 NJPER 321 (¶21132 1990), aff'd NJPER Supp.2d 250 (¶209 App. Div. 1991); State of N.J. and State Supervisory Employees Ass'n a/w NJCSA/NJSEA, P.E.R.C. No. 80-19, 5 NJPER 381 (¶10194 1979), aff'd in pt., rev'd in pt. 7 NJPER 28 (¶12012 App. Div. 1980); E. Brunswick Bd. of Ed. and E. Brunswick Ed. Ass'n, P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981), aff'd in pt., rev'd in pt., NJPER Supp.2d 115 (¶97 App. Div. 1982); Englewood Bd. of Ed., P.E.R.C. No. 98-75, 24 NJPER 21 (¶29014 1997); Milltown Bd. of Ed., P.E.R.C. No. 97-66, 23 NJPER 28 (¶28020 1996); Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 95-15, 20 NJPER 334 (¶25175 1994), recon. den. P.E.R.C. No. 95-16, 20 NJPER 378 (¶25190 1994); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); Monroe Tp. Bd. of Ed., P.E.R.C. No. 80-146, 6 NJPER 301 (¶11143 1980); and Fairview Board of Ed., P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979). Most of these cases involved negotiability determinations of proposed contract language. For example, in Jersey City, supra, the Commission

found that although teacher assignments are an inherent managerial prerogative, the following contract clause regarding notice of reassignments was purely procedural and therefore mandatorily negotiable: "assignments shall be given to teachers at least three days before the closing of school."

Monroe Tp. Bd. of Ed., supra, like the instant case, arose in the context of a petition seeking to restrain grievance arbitration over an alleged violation of a teacher reassignment clause's notice requirement. One of the clauses allegedly violated by the Board provided: "The Board agrees that teachers shall receive their building and class assignments for the next school year prior to the last day of school. Changes required after that date will be mailed to their file addresses." Id. at 302. The Commission found that the Board's substantive decision to reassign the teacher could not be submitted to binding arbitration, but that procedural aspects of the involuntary assignment related to notice and an opportunity to meet with the superintendent and principal prior to the assignment were arbitrable. In so finding, the Commission noted that the Board had already made the reassignment and that even though notice and an opportunity to discuss were negotiable terms and conditions of employment, they could not serve as preconditions to an employer effectuating a transfer based on educational policy judgments. Id.

Applying this case law, we will permit arbitration over the alleged violation of a contractual notice provision. As in Monroe, the instant case involves transfers that were already made. Although the Association has conceded the point and, beginning with the original grievance, has never sought to challenge the Board's transfer decisions, we reiterate that should the arbitrator find that the Board failed to comply with any applicable contractual notice provisions, such violation may not authorize rescission of the transfers/reassignments. We will not speculate about what other remedies may or may not be lawful if a violation is proved. Any challenges to a remedy awarded can be raised in post-arbitration proceedings. State of New Jersey, P.E.R.C. No. 89-85, 15 NJPER 153 (¶20062 1989).

ORDER

The request of the Paterson State-Operated School District for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: September 24, 2015

Trenton, New Jersey