

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY INSTITUTE OF
TECHNOLOGY,

Petitioner,

-and-

Docket No. SN-85-105

NEWARK COLLEGE OF ENGINEERING
PROFESSIONAL STAFF ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission partially restrains binding arbitration of a grievance which the Newark College of Engineering Professional Staff Association filed against the New Jersey Institute of Technology. The grievance asserted, in relevant part, that NJIT violated its collective negotiations agreement when it denied a professor's request for release time and allegedly violated a settlement of an earlier grievance. The majority representative did not challenge the decision to increase the professor's workload and the grievance documents and the demand for arbitration did not raise any compensation issues.

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Appearances:

For the Petitioner, DeMaria, Ellis and Hunt, Esqs.
(Dennis J. Alessi, on the Brief)

For the Respondent, Sterns, Herbert and Weinroth,
Esqs, (Michael J. Herbert, Of Counsel,
Linda K. Stern, On the Brief)

DECISION AND ORDER

On May 30, 1985, the New Jersey Institute of Technology ("NJIT") filed a Petition for Scope of Negotiations Determination. NJIT seeks a permanent restraint of binding arbitration of portions of a grievance which the Newark College Of Engineering Professional Staff Association ("PSA") has filed. The grievance asserts that NJIT violated the parties' collective negotiations agreement by: (1) denying Professor Theodore Zaner's request for three additional hours of release time in lieu of classroom instruction, (2) reneging on an agreement settling an earlier grievance, and (3) failing to comply with the grievance procedure in processing this grievance.

NJIT contends that the first two issues may not be submitted to binding arbitration, but concedes that the third issue may be.

Both parties have filed briefs and exhibits. The following facts appear.

The Association is the majority representative of NJIT's non-supervisory faculty and administrative staff. NJIT and the Association are parties to a collective negotiations agreement effective from July 1, 1983 through June 30, 1986. The agreement's grievance procedure ends in binding arbitration of grievances dealing with contractual terms. It bars the arbitrator from substituting his judgment for the academic judgment of NJIT's educators.

Theodore Zaner is Professor of Human Resource Management. From academic year 1971-1972 through 1982-1983, he was Associate Chairman of the Department of Organizational and Social Sciences. During this period, he was assigned a 12 hour workload, divided into six hours of teaching and six hours of release time for research and thesis advising.^{1/}

In 1981, NJIT denied Zaner a promotion to Distinguished Professor. Zaner grieved this decision. The grievance challenged, in part, certain procedures the College used or did not use in

^{1/} The NJIT Handbook contains guidelines for faculty workloads, including recognition that administrative responsibilities may warrant teaching load reductions. We do not consider whether Zaner's past or present assignments conformed with these guidelines.

gathering information relevant to the promotional decision. According to PSA, NJIT's president and vice-president agreed that if Zaner withdrew the grievance and if he resigned as Associate Chairman of his department, he would continue to be assigned a six hour teaching load, rather than the typical nine hour load. NJIT denies that such an agreement existed.

Zaner withdrew the grievance and resigned as Associate Chairman. Following a search, a new Chairman and Associate Chairman were appointed.

In 1983, Zaner filed a grievance concerning the recommendations of the search committee. The grievance alleged that the search committee had not followed acceptable and uniform steps and that two members were biased. PSA demanded binding arbitration, but later withdrew this request. According to Zaner, he was told that if he withdrew this grievance his release time would be restored.

Although Zaner relinquished his position as Associate Chairman, he continued as the Coordinator of Human Resources and also became his department's Coordinator for Management Programs. In addition he was a graduate advisor. During the 1983-1984 school year, Zaner carried a six hour teaching load and six hours of release time. NJIT asserts that Zaner received three hours of release time so that he, as the Management Program Coordinator, could smooth the department's transition to a new chairperson and assistant chairperson; PSA disputes this assertion. The remaining three hours of release time was to advise students.

For the 1984-1985 school year, NJIT assigned Zaner a nine hour teaching load and three hours of release time for his position as graduate advisor. No additional compensation was offered. NJIT asserts that it reduced Zaner's release time because it was no longer necessary for him to help with the department's leadership transition.

On September 26, 1984, Zaner filed a grievance. Zaner alleged that NJIT had reneged on its alleged agreement to continue his six hour teaching load and to allocate three hours of release time for Zaner's work as Coordinator of Human Resources if he withdrew his grievance challenging NJIT's refusal to promote him. Zaner also alleged that his release time had been reduced because he had grieved the search committee process and that he had withdrawn this grievance after receiving an assurance his release time would be restored. Zaner sought restoration of three hours of release time.

On December 12, 1984, NJIT's president denied the grievance. He concluded that the reduction in release time was not arbitrary or contractually grievable. He further found that Zaner was not entitled to three additional hours of release time because he was Coordinator for Management Programs or because of any agreements.

On February 20, 1985, PSA demanded binding arbitration. It described the grievance:

This grievance alleges that the administration was arbitrary, capricious and discriminatory in its treatment of Professor Theodore Zaner in reducing his teaching relief time. The administration's actions reneged on verbal agreements and punished Professor Zaner for having submitted a prior grievance with a colleague. The administration failed to respond or discuss his complaint and hence failed to meet the procedural requirements of the grievance procedure.

This petition ensued.

NJIT contends that it had a managerial prerogative to assign Zaner to more classroom instruction time and less release time. It denies that it agreed to freeze Zaner's teaching load, but asserts that even if it had, that agreement would not be enforceable through binding arbitration. It also denies that it failed to follow proper grievance procedures, but admits this issue is arbitrable.

PSA does not now challenge NJIT's decision to increase Zaner's workload. Instead, it limits the issue to whether the increase in workload without the offer of additional compensation is within the scope of negotiation and arbitration.

In its reply brief, NJIT asserts that the grievance and demand for arbitration do not contest the lack of additional compensation.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978),

the Supreme Court, quoting from In re 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.

Thus, we do not address the merits of PSA's contractual claims or NJIT's contractual defenses, nor do we consider any questions of contractual arbitrability.

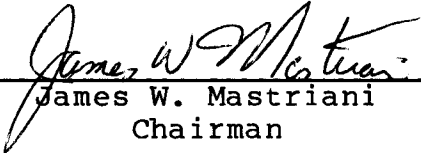
Since the Association does not now challenge the Board's asserted managerial prerogative to increase Zaner's teaching loads, we must hold that the grievance's disputed portions may not be submitted to binding arbitration. We do not consider whether additional compensation for increased teaching time is in the abstract mandatorily negotiable since the grievance documents and the demand for arbitration do not suggest that compensation is in issue.^{2/} Accordingly, we will restrain binding arbitration of the first two issues PSA seeks to submit to binding arbitration.

^{2/} We will not consider the negotiability of claims raised in a brief but not in grievance documents or the demand for arbitration. Elizabeth Bd. of Ed., P.E.R.C. No. 80-1, 5 NJPER 303 (¶10164 1979). A brief may, however, narrow or reduce the issues already raised in grievance documents or the demand.

ORDER

The request of the New Jersey Institute of Technology is granted to the extent that the grievance alleges that NJIT was arbitrary, capricious and discriminatory in reducing Zaner's teaching relief time or that NJIT reneged on its agreement and punished him for having submitted a prior grievance.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
October 17, 1985
ISSUED: October 18, 1985