

P.E.R.C. NO. 92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

THE BOARD OF EDUCATION OF THE
BOROUGH OF TENAFLY,
Petitioner,

-and-

Docket No. SN-7

TENAFLY TEACHERS' ASSOCIATION,
Respondent.

SYNOPSIS

The Executive Director, acting on behalf of the Commission, issues an order restraining and enjoining arbitration during the pendency of a scope of negotiations proceeding relating to the negotiability of the assignment of teachers to early morning supervision duty and the circumstances under which a teacher may accept compensation for tutoring students enrolled in the teacher's class or school.

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For the Petitioner, Messrs. Parisi, Evers
& Greenfield, Esqs.
(Mr. Irving C. Evers, of Counsel)

For the Respondent, Messrs. Goldberg & Simon, Esqs.
(Mr. Theodore M. Simon, of Counsel)

INTERLOCUTORY DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Board of Education of the Borough of Tenafly (the "Board") with the Public Employment Relations Commission (the "Commission") March 19, 1975 requesting the Commission to make a determination as to whether certain matters in dispute with the Tenafly Teachers' Association (the "Association") are within the scope of collective negotiations.

The Board indicated that the disputes have arisen regarding certain matters which the Association has sought to process pursuant to the collectively negotiated grievance procedure and concerning which the Association is attempting to invoke arbitration pursuant to their contract grievance procedure.

The Board requested that the Commission temporarily restrain arbitration during the pendency of the proceeding. The

undersigned, having been delegated the authority to act on this matter on behalf of the Commission, issued an Order to Show Cause March 20, 1975 with a return date of April 7, 1975. Pursuant thereto, the parties appeared and presented oral and written argument.^{1/}

Thereafter, the undersigned issued an Interlocutory Decision on behalf of the Commission denying the request for restraints essentially for the reason that those elements of unfair practice proceedings which lend themselves to the assertion of authority to grant interim relief in appropriate circumstances^{2/} are absent in a scope of negotiations proceeding.^{3/} The Appellate Division reversed that decision, holding that the Commission has the power and jurisdiction to grant interim relief in pending scope of negotiations proceedings.^{4/}

^{1/} This matter and another one, The Board of Education of the City of Englewood and Englewood Teachers' Association, Docket No. SN-9, were argued together and were consolidated for the purpose of the issuance of the interlocutory decision discussed below. These matters are hereafter being processed separately before the Commission.

^{2/} The Commission has adopted rules of practice governing such requests in unfair practice proceedings. See N.J.A.C. 19:14-9.1, et seq., effective April 1, 1975.

^{3/} P.E.R.C. No. 86, May 7, 1975, 1 NJPER 18 (1975).

^{4/} The Board of Education of the City of Englewood v. Englewood Teachers' Association and The Board of Education of the Borough of Tenafly v. Tenafly Teachers' Association, N.J. Super (App. Div.) Docket No. A-3421-74 and A-3422-74, decided June 27, 1975, rev'g and remanding P.E.R.C. No. 86. In its decision, the Court said, "Considering these broad powers granted to it by the Legislature, we can conceive of no reason why PERC should not have the power to grant interim relief during the pendency of a scope of negotiation proceeding. Certainly, PERC has the power to terminate any arbitration proceedings by issuing its final order in a scope proceeding. Implicitly,

(Continued)

The two disputed matters herein involve the assignment of certain teachers to early morning supervision duty and the circumstances under which a teacher may accept compensation for tutoring students enrolled in the teacher's class or school.

The Board contends that the subjects in dispute are "inherent managerial prerogatives" that may not be submitted to an arbitrator. The Board is seeking "a decision as to whether or not the matters hereinabove referred to and concerning which arbitration has been demanded are in fact managerial prerogatives or matters which are within the scope of collective negotiations and therefore arbitrable."

The position of the Association is that the matters in dispute relate to alleged violations of the contract between the parties and that they lie within the contractually agreed upon grievance procedure. Thus, these matters should proceed to

4/ (Continued from Pg. 2)

it should have the power to suspend arbitration whenever it determines it reasonable to do so. Obviously, if the result of a given scope proceeding would negate arbitration, the prosecution of arbitration proceedings in the interim would constitute a monumental waste of time and energy.

Again, we cannot conclude that it was the intent of the Legislature to compound scope procedures by requiring resort to another tribunal during their pendency. It seems more probable that it was the legislative intent that all issues relevant to scope of negotiations be determined in one forum. (Citation omitted) We find that in vesting PERC jurisdiction over questions of scope of negotiability, the Legislature intended to include the jurisdiction and power to grant interim relief in such proceedings.

arbitration in accordance with the parties' agreement.

Subsequent to the issuance of the Appellate Division decision, supra., the Board renewed its request that an order issue restraining arbitration pending a determination by the Commission on the merits. The Association contends that no restraints should issue because the issues are "obviously arbitrable" and because, in any event, the arbitration is advisory only and there can be no irreparable harm.

Given the language of the decision in Englewood, quoted at length above, it appears that arbitration should be enjoined upon appropriate application when a bona fide scope of negotiations question has been presented to the Commission for determination. This policy will avoid the "monumental waste of time and energy" referred to by the Court in the prosecution of an arbitration proceeding if the result of a scope proceeding could negate arbitration.

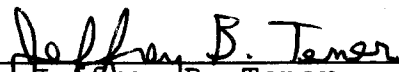
The ultimate administrative decision in scope of negotiations proceedings will be made by the Commission. See Rule Section 19:13-3.7. The undersigned views his function as being limited to a determination as to whether there is any reasonable basis for the contention of the requesting party that the matter(s) in dispute may be found not to be within the scope of collective negotiations and therefore not arbitrable. In such circumstances, the requested order will issue.

With respect to the instant matters, the undersigned

has heard the arguments of counsel and considered the briefs submitted herein, and concludes that there is a bona fide dispute as to whether the matters to be presented to arbitration are within the scope of collective negotiations.

IT IS, THEREFORE, ORDERED on this 24th day of July, 1975, that the Respondent, Tenafly Teachers' Association, its officers, agents, employees, and attorneys and such persons in active concert or participation with them shall be and hereby are enjoined and restrained from proceeding to arbitration pending a final administrative determination by the Commission of the within scope of negotiations petition or until further order of the Commission.

IT IS FURTHER ORDERED that the petitioner shall serve copies of the within order upon the Respondent and that service shall be accomplished pursuant to N.J.A.C. 19:17-1.3.



Jeffrey B. Tener
Executive Director