

P.E.R.C. NO. 96-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-55

MIDDLETOWN TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Middletown Township Board of Education for a restraint of binding arbitration of grievances filed by the Middletown Township Education Association. The grievances contest the number and identity of Board representatives at grievance hearings. The Commission finds that neither the employer nor the majority representative may interfere with each other's choice of representatives for negotiations and grievance processing or insist upon negotiating over the identity of those representatives. No allegation or evidence suggests that having a second person present to take notes intimidates or coerces the Association representatives on the other side of the table or prevents the adjustment of grievances.

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, Kalac, Newman, Lavender & Campbell,
attorneys (Peter P. Kalac, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On December 5, 1994, the Middletown Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of several grievances filed by the Middletown Township Education Association. The grievances typically assert that the Board violated the parties' collective negotiations agreement when it assigned two administrators rather than one to attend grievance hearings.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's teachers and other non-supervisory professional employees. The parties entered into a

collective negotiations agreement effective from July 1, 1993 through June 30, 1996. Article VIII is entitled Grievance Procedure. Sections 8.15 through 8.22 provide:

- 8.15 A grievant may initially discuss the matter, identified as a grievance, with his/her immediate superior in an attempt to settle the grievance informally....^{1/}
- 8.16 A grievant may file a grievance in writing by presenting the written grievance to his/her principal and forwarding copies to the Superintendent and the Professional Rights and Responsibilities Committee. The written grievance shall indicate the interpretation, application or violation of policies, agreements or administrative decision that the grievant believes adversely affects him/her.
- 8.17 The grievant and his/her principal shall meet in an attempt to resolve the grievance not later than five (5) school days following the date on which it was filed.

^{1/} Sections 8.4 and 8.5 of the definitional part of Article VIII provide:

- 8.4 Immediate Superior on the High School or Middle School level shall mean the High School or Middle School Principal, Assistant Principal, or Department Supervisor where one exists. On the Elementary level, immediate Supervisor shall mean the Building Principal, Assistant Building Principal, or Instructional Supervisor (if the grievance involves instruction).
- 8.5 Principal shall mean the Building Principal or such other person duly appointed to act as principal in the principal's absence.@

- 8.18 The Principal shall communicate his/her decision in writing to the grievant not later than five (5) school days following their meeting. A copy of the decision shall also be forwarded, at the same time, to the Superintendent and the Middletown Township Education Association.
- 8.19 If the grievance has not been resolved at the initial step (Principal-immediate supervisor), the grievant may request a hearing with the Board or its representatives. The request shall clearly explain the grievance and be made in writing not later than five (5) school days following the Principal-immediate superior's decision, or if no such decision has been communicated, then not later than five (5) school days following the expiration of the five (5) school days period provided in 8.18. The grievance procedure for secretaries shall commence with the Board or its designee.
- 8.20 The grievant and the Board or its representatives shall meet in an attempt to resolve the grievance not later than ten (10) school days following the date on which the hearing was requested. The grievant may have up to three (3) representatives present when his/her grievance is reviewed by the Board or its representatives.
- 8.21 The Board shall communicate its decision in writing to the grievant not later than fifteen (15) school days following the hearing. A copy of the decision shall also be forwarded, at the same time, to the Superintendent and the Middletown Township Education Association.
- 8.22 Should the Association decide that based on the Board's decision the grievance is satisfactorily adjusted, then the Board's decision shall be binding on all parties.

Sometime before March 30, 1994, the Board began assigning more than one representative to attend grievance hearings. The

Association's president wrote a letter to the District Administrator claiming that having more than one administrator attend the hearings violated these sections. The District Administrator responded:

In deference to your request I have reviewed the language over and over again, and I must confess I find nothing in the language which indicates to me the Association's right to dictate how the Board or its representatives shall staff grievance hearings. Therefore, please be advised that staffing at grievance hearings will normally be the hearing officer and an additional administrator or confidential secretarial staff member whose major function will be to take notes concerning the hearing in order that the hearing officer may refer to detailed notes prior to rendering a decision.

The Association filed one grievance contesting the District Administrator's procedure for staffing grievance hearings and six grievances contesting the attendance of more than one principal at particular grievance hearings. Apparently the Association refused to meet with more than one Board representative present and the Board refused to meet with only one Board representative present.

The Board denied the grievances and the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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 cannot consider the contractual merits of these grievances or any contractual defenses the Board may have.

Neither the employer nor the majority representative may interfere with each other's choice of representatives for negotiations and grievance processing or insist upon negotiating over the identity of those representatives. Matawan Reg. Bd. of Ed., P.E.R.C. No. 80-153, 6 NJPER 325 (¶11161 1980); General Electric Co. v. N.L.R.B., 412 F.2d 512, 71 LRRM 2418 (2d Cir. 1969); see generally Hardin, The Developing Labor Law, at 927 (3d ed. 1992). We have therefore held that proposals concerning the composition of a negotiations team are not mandatorily negotiable. Willingboro Bd. of Ed., P.E.R.C. No. 92-48, 17 NJPER 497 (¶22243 1991) (proposal not mandatorily negotiable to extent it would circumscribe employer's right to designate representative to negotiate over overtime compensation); Borough of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989) (proposal requiring police commissioner to be present at negotiations not mandatorily negotiable); Matawan (proposal setting number and identity of negotiations team members not mandatorily negotiable); Jackson Tp., I.R. No. 90-16, 16 NJPER 210 (¶21083 1990) (article prohibiting Director of Public Safety from sitting on negotiations team is unenforceable). And N.J.S.A 34:13A-5.4(b)(2) expressly prohibits an employee organization from interfering with restraining, or coercing

a public employer's selection of its representatives for negotiations or grievance adjustments while N.J.S.A. 34:13A-5.4(a) (1) and (5) implicitly prohibit a public employer from interfering with, restraining, or coercing an employee organization's selection of its representatives. See, e.g., Bogota Bd. of Ed., P.E.R.C. No. 91-105, 17 NJPER 304 (¶22134 1991); Bergen Pines Cty. Hosp., P.E.R.C. No. 91-98, 17 NJPER 254 (¶22117 1991); Salem Cty., P.E.R.C. No. 87-122, 13 NJPER 294 (¶18124 1987). Contrast Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985) (union did not interfere with board's right to select its negotiations representatives by opining that employer should not be represented by supervisor and principal who evaluated teachers on union's negotiations team; no coercion or refusal to negotiate shown).

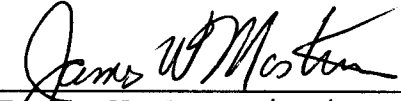
There are exceptions to these principles. For example, an employer may refuse to negotiate with a negotiations team purportedly representing supervisors, but in fact illegally dominated by non-supervisors. Borough of Somerville, P.E.R.C. No. 88-77, 14 NJPER 218 (¶19077 1988). And private sector precedent holds that an employer or employee organization need not deal with a particular member of a negotiations team given "persuasive evidence that the presence of the particular individual would create ill will and make good-faith bargaining impossible." KDEN Broadcasting Co., 225 NLRB 25, 35, 93 LRRM 1022 (1976) (emphasis in original); The Developing Labor Law at 180. We need not speculate about what other

exceptions may exist under different circumstances because the instant dispute is covered by the rule rather than any exception and is therefore not mandatorily negotiable. If sustained, the grievances would limit the number of employer representatives at grievance hearings and would establish the identity of those representatives. No allegation or evidence suggests that having a second person present to take notes intimidates or coerces the Association representatives on the other side of the table or prevents the adjustment of grievances. We therefore restrain arbitration.

ORDER

The request of the Middletown Township Board of Education for a restraint of binding arbitration of the grievances contesting the number and identity of Board representatives at grievance hearings is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: December 21, 1995
Trenton, New Jersey
ISSUED: December 21, 1995