

P.E.R.C. NO. 81-128

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BRUNSWICK BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket No. SN-81-65

NORTH BRUNSWICK TOWNSHIP  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission denies a request of the Board to restrain arbitration concerning a grievance of the Association which alleged a violation of a contract provision concerning the right of a teacher to review the contents of her personnel file. The Commission finds the clause in question to be a mandatory subject of negotiations.

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Appearances:

For the Petitioner, Borrus, Goldin & Foley, P.C.  
(James E. Stahl, of Counsel)

For the Respondent, Klausner & Hunter, Esqs.  
(Stephen E. Klausner, of Counsel)

DECISION AND ORDER

On February 2, 1981, the North Brunswick Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the North Brunswick Township Education Association (the "Association") are within the scope of collective negotiations.

The dispute arose on October 6, 1980, concerning the placing of certain letters and/or memoranda in the personnel file of a teacher, Diane Lanier, in alleged violation of both N.J.A.C. 6:3-1.21 and the collective bargaining agreement between the parties. The grievance demanded as a remedy that the letters

be removed from the teacher's file and that the Board be required to follow the procedures regarding the placement of material in the personnel files of employees as outlined in the parties' collective bargaining agreement.<sup>1/</sup>

Following the denial of the grievance by the Board, the Association, on January 6, 1981, filed with the Commission a Request for Submission of a Panel of Arbitrators, in which the Association revised its statement of the nature of the grievance

<sup>1/</sup> The relevant contract provisions include Article XIII, I(1), (2), (4) and Article XIII J:

I.1. A teacher shall have the right, upon request, to review the contents of her personnel file.

2. Any material relative to a teacher's conduct, service, character or personality shall not be placed in his personnel file unless the teacher has had an opportunity to review such material. The teacher must acknowledge that he has had the opportunity to review such material by affixing his signature to the copy to be filed, with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the opportunity to submit a written answer to such material, and his answer shall be reviewed by the Superintendent of Schools of his designee and attached to the file copy...

4. The Board shall not establish any separate personnel file which is not available for the teacher's inspection.

J. Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person, which are used in evaluating a teacher shall be promptly investigated and called to the attention of the teacher. The teacher shall have the right to be present or represented at any meetings or conferences regarding formal complaints. The teacher must respond to and/or rebut all complaints in writing.

so as to focus solely on the Board's alleged violation of contractual procedures concerning the placement of material in employees' personnel files.

The Board, in the Petition herein and in its supporting brief, objects to the arbitration of the dispute, asserting, among other reasons, that it has not violated the pertinent contract provisions.

The decision in this case turns upon the identity of the issue in dispute. In determining the nature of the issue which the Association seeks to arbitrate, the Commission considered the statement of the grievance and demand for arbitration in conjunction with the provisions of the contract which the Association alleges have been violated. In re Elizabeth Board of Education, P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979).

However, the Appellate Division has held that the totality of the parties' submissions in scope of negotiations proceedings must be considered in part to avoid a situation where a party seeks to obtain "a declaratory judgment on an abstract situation having no relationship with the nub of the controversy." Englewood Bd of Ed v. Englewood Teachers Ass'n, 150 N.J. Super. 265, 3 NJPER 242 (App. Div. 1977), cert. den. 75 N.J. 525 (1977). After a careful consideration of the parties' written submissions in this matter and the relevant exhibits, the Commission concludes that, notwithstanding the Board's references in its Petition and supporting brief to the negotiability/arbitrability of what information may be placed in teachers' personnel files,

the dominant issue herein relates to whether or not the procedures agreed upon by the parties concerning the placement of material in teacher personnel files are a proper one for collective negotiations.<sup>2/</sup>

The Commission has held that teachers' rights to access to their personnel files are required subjects for collective negotiations. In re West Amwell Twp., P.E.R.C. No. 78-31, 4 NJPER 23 (¶4012 1977). In a logical extension of this principle, the New Jersey Supreme Court has held that if a matter is "one on which the parties to collective bargaining may negotiate" that matter is also arbitrable. Ridgefield Park Ed Ass'n v. Ridgefield Park Bd of Ed, 78 N.J. 144, 160 (1978). Thus we find the instant matter to be a mandatory subject of negotiations, and may be submitted to arbitration if otherwise arbitrable under the parties' agreement.<sup>3/</sup>

2/ The Commission has in the past determined that limitations on what information may be placed in a personnel file are non-negotiable and therefore not arbitrable. In re Fairview Bd of Ed, P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979). However, as noted above, we do not find it necessary to address this issue in the instant case.

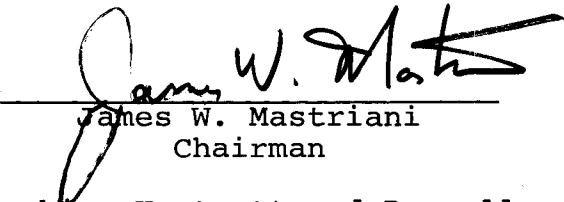
3/ See Ridgefield Park Ed Assn v. Ridgefield Pk Bd of Ed, 78 N.J. 144, 153-156 (1978) where the court discusses the proper procedure in resolving scope of negotiations cases and cited approvingly the Commission's description of its role in such cases:

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. 78 N.J. at 154.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the request of the North Brunswick Board of Education for a restraint of arbitration on the issue of whether contract notice and review procedures were adhered to when the Board placed certain documents in the personnel file of a teacher is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Suskin, Hartnett and Parcels voted in favor of this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present. None opposed.

DATED: Trenton, New Jersey  
April 24, 1981  
ISSUED: April 28, 1981