

P.E.R.C. NO. 88-139

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-45

TRENTON EDUCATIONAL
SECRETARIES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines a request by the Trenton Board of Education to restrain binding arbitration of three grievances filed by the Trenton Educational Secretaries Association. The grievances allege the Board violated contractual provisions on posting notices of vacancies and new positions. The Commission finds that the grievances pertain to the mandatorily negotiable procedures attendant to transfers, reassignments and vacancies.

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Appearances:

For the Petitioner, Lemuel H. Blackburn, Jr., P.C.
(Gregory G. Johnson, of counsel)

For the Respondent, New Jersey Education Association
(Anne E. Rowbotham, UniServ Field Representative)

DECISION AND ORDER

On December 24, 1987, the Trenton Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The petition seeks a restraint of binding arbitration of three grievances filed by the Trenton Educational Secretaries Association ("Association"). The grievances allege the Board violated contractual provisions on posting notices of vacancies and new positions. The Trenton Educational Secretaries Association ("Association") had filed three grievances claiming that these provision had been violated.

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

The Association is the majority representative of the Board's educational secretaries and certain other personnel. The

parties' collective negotiations agreement has a grievance procedure ending in binding arbitration. Article 12 provides for ten days notice of involuntary transfers. Article 16, entitled Vacancies and New Positions, provides:

- A. Notice of all vacancies and locations of all positions, including new positions, shall be posted in each school and office building no later than thirty (30) days following the formal notice of the Board action that created such vacancy.
 - 1. Secretaries who apply for a vacancy shall receive in writing from the Personnel Office proper acknowledgement of their application/request within ten (10) days.
 - 2. The Association must be notified in writing of all transfers, etc.
 - 3. All vacancies shall be posted for a minimum of ten (10) days.
- B. The Association will be notified of the identity of the person selected for the position within sixty (60) calendar days of the last day for the filing of applications or if the position has not been filled within that period, of the reason for the delay.
- C. When a vacancy is filled from within the district, the appointee shall be notified no later than 10 days after the action has been taken by the Board.
- D. All positions when vacated shall be advertised at the current job classification.
- E. Every in-house secretary who applies for a position must be screened.

On September 18, 1986, the Board's Executive Director of School Operations issued a directive creating certain secretarial positions at the Gregory, Mott, Alternative Education, and

Monument schools and reducing secretarial positions at the Robinson, Grant, and Jefferson schools and Trenton High School. On November 20, 1986, the Board transferred and reassigned several employees, effective January 5, 1987. It allegedly did so in order to deploy secretarial positions in the same manner as teachers and administrators.

On November 21, 1986, the Association filed four grievances, numbers 3-86-11-326, 327, 328 and 329. Grievance no. 327 has been resolved.

Grievance no. 326 alleges that the Board violated Articles 12 and 16 when it transferred the senior secretary in the high school attendance office to a new position at the Gregory school without giving 10 days notice of the involuntary transfer and posting the vacancy for 30 days and screening applicants. Grievance no. 328 alleges that the Board violated Articles 12 and 16 when, without proper notice, posting or screening, it transferred one senior secretary from a full-time position at the Jefferson School to two one-half time positions at the Jefferson and Grant schools; a second senior secretary from a temporary position of senior secretary at P.J. Hill school to two one-half time positions at Monument and Alternative schools; a third senior secretary from the Robinson school to the Gregory school, and a fourth senior secretary from a full-time position at Trenton High School to two one-half time positions at the Robinson and Mott schools. Grievance no. 329 alleges that the Board violated Article 16 when it created

secretarial positions at the Gregory, Mott, Alternative Education, and Monument schools without proper notice, posting or screening.

The Board denied these grievances and the Association demanded binding arbitration. An arbitration hearing on all grievances was held November 16, 1987 and the arbitrator instructed the parties to file briefs by December 10, 1987. On December 23, however, the Board advised the arbitrator that it intended to file a scope of negotiations petition and asked the arbitrator to pend further proceedings. He declined.

On February 25, 26 and 29, the arbitrator issued his decisions. With respect to grievance no. 326, he found that the Board had violated Article 16 by not posting and screening applicants for the new position at Gregory school and that the Board violated Article 12 by not giving 10 days notice of the involuntary transfer; as a remedy he ordered the Board to comply with the contractual notice, posting and screening requirements, but did not order rescission of the transfer. With respect to grievance no. 328, he found that the Board had committed the same contractual violations; as a remedy he required the Board to give henceforth a minimum of 10 days notice of involuntary transfers or reassignments, but did not order rescission. With respect to grievance no. 329, he found that the Board had violated Article 16 by not posting positions and screening applicants for the new positions; as a remedy he ordered compliance with those provisions, but did not order rescission.

The Board argues that Article 16, Paragraph D is not mandatorily negotiable because it requires it to advertise and fill all vacancies without allowing the Board to reclassify positions, change job descriptions or reorganize its secretarial system.

The Association asks us to dismiss the petition as untimely because it was not filed before the arbitration hearing had been completed.

In Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983), we declined to entertain a scope of negotiations petition filed after an arbitration award. The dissatisfied party's recourse was to file an action to vacate the award under N.J.S.A. 2A:24-7 and then ask the Chancery Division to transfer the scope question to us under Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978). To date, however, we have not rejected petitions filed after arbitration proceedings have commenced, but before an arbitration decision has issued. That last event brings into play the Chancery Division's jurisdiction and displaces ours absent a transfer. University of Medicine & Dentistry of New Jersey, P.E.R.C. No. 86-110, 12 NJPER 355 (¶17133 1986). While we regret the failure to file this petition earlier, we will entertain it.^{1/} We will, however, limit our ruling on the negotiability of Article 16 to the awards' factual context.

^{1/} We express no opinion on whether our interim relief jurisdiction should be exercised to restrain the issuance of awards after arbitration hearings.

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 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. [78 N.J. at 154]

Thus, we do not review the awards' merits.

Procedures attendant to transfers, reassignments and vacancies are mandatorily negotiable. Ridgefield Park. Such procedures include notice, posting and a chance to have one's application considered. Jersey City Bd. of Ed., P.E.R.C. No. 88-59, 14 NJPER 109 (¶19039 1988); Jersey City Bd. of Ed., P.E.R.C. No. 88-52, 7 NJPER 682 (¶12308 1981). These disputes, as presented to and decided by the arbitrator, centered on those procedural issues. The awards do not require rescission of any personnel actions or inhibit the Board's decision to reorganize its secretarial system, classifications or duties. Since the issues involved in the arbitration awards are limited to what procedures the Board must

follow in selecting employees to reassign or transfer they involve mandatorily negotiable subjects.

ORDER

The Board's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
June 23, 1988
ISSUED: June 24, 1988