

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BELVIDERE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-34

BELVIDERE EDUCATION ASSOCIATION,

Respondent.

BELVIDERE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-35

BELVIDERE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board of Education, the Commission rules on the negotiability of issues relating to sabbatical leaves and requests for approval for coaches to attend clinics paid for by the Board of Education. The Association had filed grievances, pursuant to the contractual agreement between the parties, that alleged that the Board had violated the contract in not complying with provisions relating to the issues in dispute. The Board concluded that the decisions that it had made with regard to the matters in dispute concerned its managerial discretion and dealt with non-negotiable and therefore non-arbitrable issues.

The Commission finds that the issues relating to sabbatical leaves and requests for approval for coaches to attend athletic clinics to be paid for by the Board relate to required subjects of negotiations, in accordance with both Commission and judicial precedent, and that disputes concerning such subjects may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties covering the period from July 1, 1976 to June 30, 1977. It was further ordered that the requests of the Board for permanent restraints of arbitration relating to these matters be denied.

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Appearances:

For the Belvidere Board of Education,
(Mr. Robert E. Wade, of Counsel)

For the Belvidere Education Association, John A. Thornton, Jr.,
N.J.E.A. UniServ Representative

DECISION AND ORDER

Petitions for Scope of Negotiations Determinations, Docket Nos. SN-77-34 and SN-77-35, were filed with the Public Employment Relations Commission (the "Commission") on April 29, 1977 by the Belvidere Board of Education (the "Board") seeking determinations as to whether certain matters in dispute between the Board and the Belvidere Education Association (the "Association") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq.

(the "Act").^{1/} The instant petitions also requested that the Commission grant interim relief in the form of an order restraining arbitration proceedings concerning the issues in dispute. In a letter dated May 5, 1977, the Special Assistant to the Chairman of the Commission, citing various Commission decisions concerning the negotiability of the matters at issue in the instant scope petitions and the arbitrability of both permissive and mandatory subjects of negotiations, suggested to the parties that it was unlikely that the Commission would grant the Board's request for interim relief. The Board was invited to contact the Special Assistant if it desired to proceed further with its request for restraints of arbitration. That request was not pursued by the Board.

The Board submitted a brief in support of its scope petitions dated May 5, 1977. The Association submitted a memorandum responding to the instant scope petitions, dated June 7, 1977. In correspondence dated June 30, 1977, the Special Assistant issued an order consolidating the aforementioned two scope petitions, having deemed it necessary to effectuate the purposes of the Act, and to avoid unnecessary costs or delay.

The SN-77-34 matter concerned a grievance filed by the Association and Loraine Gonsky when Ms. Gonsky's request for the approval of a sabbatical leave of absence, pursuant to Article XXI of the contractual agreement between the Board and the Association, was denied on or about January 11, 1977. The matter proceeded through the fourth level of the parties' grievance procedure at which point the Board denied the grievance. The Board filed its scope petition when the Association applied to the American Arbitration Association for

^{1/} The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations appears at N.J.S.A. 34:13A-5.4(d): "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

binding arbitration in accordance with the contractual procedure. The Board referred to Article III of the contract relating to grievance procedures that, in part, states at paragraph 3.11.2 that "No claim by a teacher shall constitute a grievable matter beyond level 4 or be processed beyond level 4 if it pertains to...(c) any matter which according to law is beyond the scope of the Board's authority" in partial support of its contention that the grievance relating to sabbatical leaves dealt with a non-negotiable, non-arbitrable matter.

The Board submitted that the agreement between the parties further provided that a sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization and for other reasons of value to the school system, subject to specific enunciated conditions. The Board stated that it had heard and reviewed Ms. Gonsky's reasons for applying for a sabbatical leave as well as the teacher's proposed course of study while on said leave and had determined that the leave would not be of value to the school system. The Board, although recognizing that judicial precedent had established that sabbatical leaves of absence were required subjects of negotiations,^{2/} concluded that the decision concerning the actual granting of a sabbatical leave of absence was a matter of managerial discretion vested with the Board and was non-negotiable and non-arbitrable.

The Association asserted that the Commission had previously determined that the issue of sabbatical leaves concerned a required subject of collective negotiations, and that a dispute concerning such a subject was arbitrable if otherwise arbitrable under the parties' agreement.

The SN-77-35 matter related to a grievance filed on behalf of several teachers who are coaches employed within the Belvidere school district. These

2/ South Orange-Maplewood Education Association v. Board of Education of South Orange, 146 N.J. Super. 457 (App. Div. 1977).

individuals had applied to the Board for approval for their attendance at coaching clinics conducted in Cherry Hill, New Jersey, the cost of which would be borne by the Board. At a January 11, 1977 meeting of the Board, these requests were denied. The aggrieved parties pursued this matter to level 4 of the grievance procedure agreed upon between the Board and the Association at which time the grievance was denied by the Board. The Board filed its scope petition when the Association applied to the American Arbitration Association for binding arbitration.

The Board's primary contention with reference to this particular matter was that the dispute did not arise from the contract, due to the absence of any "past practice clause" in the agreement between the parties, and was therefore not within the jurisdiction of the arbitrator. The Board submitted that this particular matter should be heard by the Commission as an unfair labor practice case and that the Commission should therefore deal with the substantive merits of the grievance, inasmuch as the Association's grievance related to an alleged unilateral change in terms and conditions of employment, and in consideration of the fact that the arbitrator would most likely decline jurisdiction over a matter such as this that was not "grounded" in the contract. Alternatively, the Board argued that the granting of permission to attend athletic clinics was one of managerial discretion which in the area of extracurricular activities has been deemed judicially to be quite broad.^{3/} With respect to this particular grievance, the Board specifically requested a full evidentiary hearing, as provided by N.J.A.C. 19:13-3.4, in order to explore the past and current Board practice in the area of the approval of expenses for teacher attendance at

^{3/} The Board cited Board of Education of Asbury Park v. Asbury Park Education Association, 145 N.J. Super. 495, 506 (Chan. Div. 1976) in support of this position.

extracurricular clinics, inasmuch as the relevant grievance refers to alleged changes in past practices made by the Board in denying said grievance.

The Association submits that even if the issue of time off and reimbursement for attendance at football and baseball clinics was categorized as being merely a permissive, as opposed to a required, subject for negotiations, established Commission precedent would mandate that this matter be submitted to arbitration.

Before reaching the issue of whether sabbatical leave policies and requests for approval of time off and reimbursement for the attendance of coaches at athletic clinics are within the scope of collective negotiations, certain preliminary comments are warranted. The Board in its brief in support of its scope petitions submits that the Commission should concern itself with the substantive merits of the grievance filed by the Association relating to attendance at athletic clinics. The Board also appears to raise defenses concerning the sabbatical leave question, e.g. that the Board is not compelled contractually to grant requests for sabbatical leave to a maximum of 2% of its teachers^{4/} if those teachers have completed at least seven full years of service within the district, that are not properly before the Commission in scope of negotiations proceedings. As stated repeatedly in prior Commission decisions, the Commission, in scope of negotiations determinations, addresses solely the abstract issue of whether the subject matter in dispute is 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

^{4/} There are presently 64 teachers employed within the school district.

which might be raised will not be determined by the Commission in a scope proceeding.^{5/} Those are questions appropriate for determination by an arbitrator and/or the courts.

The Commission denies the Board's request for an evidentiary hearing with reference to the grievance relating to attendance at coaching clinics. That request is inappropriate. The Board argues that this matter is likely to be returned to the Commission as an unfair practice because the arbitrator is likely to decline to hear this matter and the Association will then file a charge. That is possible, assuming the matter not to be time-barred. However, the only matter presently before us is the Board's scope petition and we are limited to rendering a determination as to whether the disputed matter is within the scope of collective negotiations. There are no disputed factual issues regarding the negotiability of that matter which is the only issue properly before us. Therefore, there is no need for a hearing.

In the instant matter it is uncontroverted that the relevant contract at issue was agreed upon after the effective date of Chapter 123, Public Laws of 1974. Therefore, the rationale enunciated by the Commission in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976) relating to arbitrability considerations is applicable to the instant consolidated case. The Commission determined in Bridgewater-Raritan, supra, that "a dispute arising under a grievance/arbitration procedure contained within a contract entered into after the effective date of Chapter 123 of the Public Laws of 1974 [January 20, 1975] may be submitted to arbitration for resolution if it involves either a required or permissive subject of collective negotiations." Since both the Commission and the courts have previously determined

^{5/} See, e.g., In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1976) and In re Ridgefield Park Board of Education, P.E.R.C. No. 77-45, 3 NJPER 150 (1977).

in other decisions that sabbatical leave policies are required subjects for collective negotiations,^{6/} a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties governing the period between July 1, 1976 and June 30, 1977.

Furthermore, in a recent Commission decision,^{7/} the Commission determined that while under Chapter 123 the decision to assign teachers to extracurricular activities related to a permissive subject of negotiations, the procedures surrounding the selection of teachers who would be coaches as well as the effects, e.g., compensation, time off and participation in coaching clinics, etc., of coaching assignments on terms and conditions of employment are required subjects for collective negotiations, and therefore these subjects would be arbitrable if otherwise arbitrable under the parties' agreement. It is the Commission's determination that the issue concerning attendance at athletic clinics and reimbursement for related expenses concerns a required subject for collective negotiations and that a dispute relating to such a subject may be submitted to arbitration if otherwise arbitrable under the parties' negotiations agreement covering the period between July 1, 1976 and June 30, 1977.

As stated above, that is not to say that the parties have entered into any agreement in this regard. All that we are saying is that the subject matter

^{6/} South Orange-Maplewood Education Association v. Board of Education of South Orange, supra; Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10, 14 (1973); cf. In re Cliffside Park Board of Education, P.E.R.C. No. 77-2, 2 NJPER 252 (1976); and In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

^{7/} In re Pascack Valley Regional Education Association, P.E.R.C. No. 77-55, 3 NJPER ___ (1977), Motion for Reconsideration denied, P.E.R.C. No. 77-68, 3 NJPER ___ (1977). Cf. In re Rutherford Education Association, P.E.R.C. No. 77-22, 3 NJPER 37 (1976).

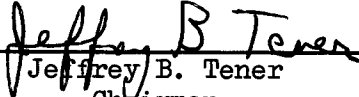
of the dispute is mandatorily negotiable. If the Association chooses to submit a dispute regarding this matter to arbitration in accordance with the terms of the parties' agreement, the Board can attempt to convince the arbitrator that the contract does not require the Board to do what the Association is seeking. The Board then can raise as a defense the absence of a "past practice clause" in the contract. If the Board is correct, it should prevail at the arbitration proceeding. That is a question for the arbitrator to decide. The only issue properly before us in this scope proceeding which the Board itself has initiated is whether the issue in dispute is within the scope of collective negotiations. See N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), N.J.A.C. 19:13-3.7 and the above discussion, the Public Employment Relations Commission hereby determines that the issues relating to sabbatical leaves and requests for approval for coaches to attend clinics paid for by the Belvidere Board of Education relate to required subjects of negotiations and disputes concerning such subjects may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties covering the period from July 1, 1976 to June 30, 1977.

It is further ordered that the requests of the Board for restraints of arbitration relating to these matters are denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Parcells voted for this decision. Commissioners Hipp and Hurwitz abstained. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey
July 13, 1977
ISSUED: July 14, 1977