

P.E.R.C. NO. 79-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTCLAIR BOARD OF EDUCATION

Petitioner,

Docket No. SN-79-68

-and-

MONTCLAIR EDUCATION ASSOCIATION

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission concludes that the gravamen of the dispute related to notice of vacancy posting procedures and not to a Board's transfer and reassignment decisions. Accordingly, the Commission, consistent with an interim decision of the Commission's Special Assistant, ruled that such a procedure is a required subject for collective negotiations for the reasons cited by the Special Assistant. Therefore, the Commission denies the request of the Board for a permanent restraint of arbitration.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTCLAIR BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-79-68

MONTCLAIR EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, McCarter & English, Esqs.
Andrew T. Berry, of Counsel
(Lois M. VanDeusen, on the Brief)

For the Respondent, Goldberg & Simon, Esqs.
(Gerald M. Goldberg, on the Memorandum of Law)

DECISION AND ORDER

On February 13, 1979 the Montclair Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a certain matter in dispute between the Board and the Montclair Education Association ("Association") is within the scope of collective negotiations.

The Board indicated in its scope petition that the instant dispute arose with respect to a particular matter which the Association sought to process pursuant to a negotiated grievance procedure and concerning which the Association has invoked arbitration pursuant to this grievance procedure. More specifically, the Board asserted that at issue was the negotiability

and arbitrability of (a) the determination of whether a vacancy exists for the purpose of posting a notice of vacancy and (b) whether the Board may fill a supervisory level vacancy by means of a lateral transfer without posting a notice of vacancy.

The Board requested that the Commission grant interim relief in the form of an order restraining arbitration proceedings concerning the issue in dispute during the pendency of this scope of negotiations petition. In a written decision the Special Assistant to the Chairman, Stephen B. Hunter, denied the Board's request for interim relief in the form of a temporary restraint of arbitration.^{1/} The Special Assistant concluded that the gravamen of the grievance related to notice of vacancy posting procedures and not to the Board's transfer and reassignment decisions. He therefore concluded, consistent with pertinent Commission and judicial precedent, that these posting procedures related to required subjects for collective negotiations and that a dispute concerning this issue could proceed to arbitration, if otherwise arbitrable under the parties' agreement.^{2/}

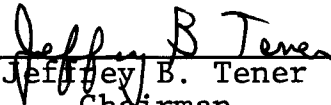
1/ In re Montclair Board of Education, P.E.R.C. No. 79-67, 5 NJPER 7 (1979). The Commission has delegated to the Special Assistant the authority to conduct Show Cause proceedings on requests for interim relief and to issue interlocutory determinations on behalf of the Commission. These interlocutory decisions constitute a determination as to whether the facts of a particular case warrant the exercise of the discretion which the Commission possesses to restrain arbitration in appropriate circumstances. A copy of this interlocutory decision is attached and made a part hereof.

2/ See e.g., In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1976), In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976), In re Byram Twp. Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143, affirmed in pertinent part, 152 N.J. Super. 12 (App. Div. 1977), State v. State Supervisory Employees Association, 78 N.J. 54 (1978).

Following the Special Assistant's determination, the parties were given the opportunity to file supplemental briefs. Neither party filed such a brief.

After careful consideration of the parties' submissions in this matter and the Special Assistant's Interlocutory Decision, we conclude that the subject matter in dispute, i.e., posting procedures, is a required subject for collective negotiations, substantially for the reasons stated by the Special Assistant to the Chairman in his Interlocutory Decision and we hereby adopt that decision as our own. The dispute between the parties may proceed to arbitration, if otherwise arbitrable under the terms of their collective negotiations agreement. Therefore, the request of the Board for a permanent restraint of arbitration must be and is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Graves voted for this decision.

None opposed.

Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

April 26, 1979

ISSUED: April 27, 1979