

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VERNON TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2001-29

VERNON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Vernon Township Board of Education for a restraint of binding arbitration of a grievance filed by the Vernon Township Education Association. The grievance contests the salary guide placement of new math and science teachers for the 2000-2001 school year. The Commission concludes that initial salary guide placement is a mandatorily negotiable issue. The Commission also concludes that arbitration cannot be used to block management from fulfilling its educational obligation to provide qualified teachers to teach math and science courses. Therefore, the Commission denies the Board's request for a restraint of arbitration, but retains jurisdiction so that if the arbitrator finds a contractual violation, the Board may reactivate its petition within 30 days after the award is issued if it believes that the award significantly interferes with its educational obligation to provide qualified teachers to teach math and science courses.

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.

P.E.R.C. NO. 2001-49

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Appearances:

For the Petitioner, Apruzzese, McDermott, Maestro & Murphy, P.C., attorneys (Robert J. Merryman, on the brief)

For the Respondent, Klausner, Hunter & Rosenberg, attorneys (Stephen E. Klausner, on the brief)

DECISION

On December 4, 2000, the Vernon Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Vernon Township Education Association. The grievance contests the salary guide placement of new math and science teachers for the 2000-2001 school year.

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

The Association represents teachers and certain other employees. The Board and the Association are parties to a

collective negotiations agreement effective from July 1, 1998 through June 30, 2001. The grievance procedure ends in binding arbitration.

Article XVIII is entitled Salary Regulations. Section C.2 provides:

In keeping with Statute 18A:29-9, initial step placement on the salary schedule shall be at such a point as agreed upon by the employee and employing board (persons employed placed on appropriate degree/credit column).

N.J.S.A. 18A:29-9 provides:

Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, his initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing board of education.

Given a large number of retirements and resignations, the Board hired about 30 teachers for the 2000-2001 school year. The Board had difficulty finding qualified math and science teachers. When it was unable to hire such teachers at steps one or two of the salary guide, it hired candidates without full-time teaching experience at salaries above steps one and two. One science and four math teachers without experience were hired at step 6. The last vacant math and science positions were filled in August of 2000, just a few days before the school year started.

The assistant superintendent certifies that if the Board had not hired these teachers at step 6, it would have been unable to fill the vacancies with certified and qualified full-time teachers. This would have resulted in cancelling courses or

filling the vacancies with substitutes who do not hold the required certification. The Department of Education does not allow non-certificated substitutes to serve for more than 20 days.

The Association's president certifies that it has been the practice to hire teachers without experience at step one and all other teachers at step two, regardless of how many years they have taught elsewhere. She further certifies that for the last four years, the Board has not placed any new teacher above step two.

Before September 14, 2000, the Association filed a grievance contesting the salary guide placement of the new math and science teachers. The step three grievance form seeks this remedy:

Advance the salaries of those faculty who have more teaching experience to a level over and above the salary guide placement of the new employees hired for the 2000/01 school year who have been placed at levels above their actual experience.

On October 16, 2000, the superintendent advised the Association that the Board had denied the grievance. He wrote, in part:

The board of education concurs with the response of Mr. Macerino, that the hiring and placement of personnel on the salary guide is solely at the superintendent's recommendation and board approval. This is their management prerogative.

Furthermore the contract is clear and specific that the salary guide level is for salary purposes only and does not directly reflect years of teaching experience.

On October 25, 2000, the Association demanded arbitration. Its demand seeks movement on the guide for all employees or red circling of individuals given improper credit on the guide. This petition ensued.

The Board asserts that it had a managerial prerogative to offer higher salary guide placement to math and science teachers if necessary to hire qualified teachers. It cites Rutgers, the State Univ. and Rutgers Council of AAUP Chapters, 256 N.J. Super. 104 (App. Div. 1992). It further asserts that the parties' contract authorizes it to reach an agreement over initial salary guide placement with individual teachers.

The Association asserts that the issue of salaries of teachers, even for those to be hired, is a mandatorily negotiable term and condition of employment which cannot be changed without negotiations. It cites Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 25 N.J. 357 (1999); and South Plainfield Bd. of Ed. v. South Plainfield Ed. Ass'n, 320 N.J. Super. 281 (App. Div. 1999), certif. den. 161 N.J. 332 (1999).

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we cannot consider the merits of the grievance or the parties' contractual defenses. We specifically do not consider the Board's assertion that the contract authorizes it to reach agreement with individual teachers on initial salary guide placement so long as the new teachers are placed on some step of the salary guide.

Local 195, IFPTE v. State, 88 N.J. 393 (1982) articulates a three-part test for determining negotiability.

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. Id. at 404-05.

Initial placement on the salary guide is a mandatorily negotiable issue. In general, it intimately and directly affects employee work and welfare and does not significantly interfere with any governmental policy determinations. Thus, an employer cannot set a new employee's salary absent negotiations with the majority

representative. Middletown Tp.; Belleville Bd. of Ed.; Stanhope Bor. Bd. of Ed., P.E.R.C. No. 90-81, 16 NJPER 178 (¶21076 1990); Gloucester Tp., P.E.R.C. No. 87-42, 12 NJPER 805 (¶17308 1986); Somerset Cty., P.E.R.C. No. 86-136, 12 NJPER 453 (¶17171 1986); see also Middlesex Cty. Pros., P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990), aff'd 255 N.J. Super. 333 (App. Div. 1992) (credit for prior governmental service mandatorily negotiable). N.J.S.A. 18A:29-9 does not preempt negotiations. Belleville Bd. of Ed.

The Board's assertions concerning the difficulty it had in hiring certificated math and science teachers are not disputed. And we have recognized that public employers may need the flexibility to offer inducements necessary to attract needed staff. Cf. New Jersey Institute of Technology, P.E.R.C. No. 83-72, 9 NJPER 33 (¶14016 1982), aff'd NJPER Supp.2d 141 (¶126 App. Div. 1984) (restraining arbitration of grievance that challenged college's offer of tenure on appointment, or a multi-year contract to teacher applicants who could not be recruited without such assurances). Arbitration cannot be used to block management from fulfilling its educational obligation to provide qualified teachers to teach math and science courses. This grievance does not appear to seek that remedy.


We are not prepared to state at this stage of the dispute that the Board's needs warrant restraining arbitration over an issue that has consistently been held to be mandatorily negotiable. Nor can we say for certain that an arbitration award in the Association's favor would significantly interfere with the educational goals the

Board has articulated, or that an accommodation of the interests of all parties cannot occur through negotiations. We will accordingly deny the Board's request for a restraint of arbitration. If arbitration results in an award in the Association's favor and the Board believes that the remedy significantly interferes with its prerogative to provide necessary staff, the Board may reactivate its petition. Scotch Plains Tp., P.E.R.C. No. 99-113, 25 NJPER 339 (¶30146 1999).

ORDER

The request of the Vernon Township Board of Education for a restraint of binding arbitration is denied. Jurisdiction is retained so that if the arbitrator finds a contractual violation, the Board may reactivate its petition within 30 days after the award is issued if it believes that the award significantly interferes with its educational obligation to provide qualified teachers to teach math and science courses.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: February 22, 2001
Trenton, New Jersey
ISSUED: February 23, 2001