

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EVESHAM TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-44

EVESHAM TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Evesham Township Board of Education for a restraint of binding arbitration of a grievance filed by the Evesham Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it did not pay a teacher, who was converted from a substitute teacher to a regular teacher in February 1997, the salary due a regular teacher for the entire 1996-1997 school year. The Commission determines that the question presented by this grievance is whether the teacher was properly paid for her work under the parties' agreement. The Commission sees no reason why a negotiated agreement could not specify that she should be paid retroactively as a regular teacher for the full year.

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. 98-143

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Appearances:

For the Petitioner, John G. Dyer, III, attorney

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen and Keith Waldman, on the brief)

DECISION

On November 12, 1997, the Evesham 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 Evesham Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it did not pay Tracy Epstein, who was converted from a substitute teacher to a regular teacher in February 1997, the salary due a regular teacher for the entire 1996-1997 school year.

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

The Association represents teachers and non-teachers, excluding administrators and supervisors. The parties' negotiated grievance procedure ends in binding arbitration of contractual disputes.

On July 30, 1996, a supplemental teacher at the St. Joan of Arc School informed the Board that she was ill and intended to apply for a disability retirement effective November 1, 1997. On September 10, 1996, the Board granted the teacher an unpaid medical leave of absence, pending the Pension Board's determination of her eligibility for a disability retirement. The Pension Board promptly approved a disability retirement, but the teacher did not promptly resign.

During the fall of 1996, the Board asked the teacher several times about her retirement plans. When no letter of resignation was received, the Board terminated the unpaid leave of absence on February 11, 1997. The teacher subsequently submitted a letter of resignation.

On August 27, 1996, Tracy Epstein was hired as a substitute teacher to fill in for the supplemental teacher. She was paid on a per diem basis and was not given a contract. The Board informed Epstein that the supplemental teacher was on sick leave and that she was not expected to return although there was no guarantee she would not.

Epstein held a valid substitute teacher's certificate, but not a provisional certificate. The Board asked the County

Superintendent to issue her a provisional certificate. In December 1996, Epstein received a certification of eligibility with advanced standing to be an elementary school teacher. She then requested a contract. The Board advised Epstein that a vacancy did not exist yet and that it wished to study the position to determine if it should be a full or part-time one. On January 7, 1997, the Assistant Superintendent for Curriculum recommended that the position should remain full-time for the balance of the school year.

On January 27, 1997, the Association filed a grievance on Epstein's behalf. It asserted that Epstein was serving as a long-term substitute and was thus entitled to be placed on the salary guide effective September 1, 1996.

On February 12, 1997, after terminating the supplemental teacher's leave of absence, the Board offered Epstein a full-time position as a supplemental teacher effective February 1, 1997. Epstein accepted and immediately signed a contract. She was placed on step one of the teachers' salary guide and paid a pro-rated salary for the rest of the school year.

The superintendent and the Board denied the grievance. They asserted that Epstein could not have been appointed to a full-time position until a vacancy existed and one did not exist until February 11.

On June 24, 1997, the Association demanded arbitration. It identified the grievance as "improper salary compensation" and

requested that Epstein be paid the salary of a full-time teacher retroactive to September 1, 1996. This petition ensued.

The Board argues that it has a prerogative to determine whether to fill a vacancy. It asserts that no vacancy existed since the regular teacher, who was on an unpaid leave of absence, still occupied the position and that it cannot hire two full-time employees for the same position. The Board further argues that since Epstein did not hold a valid certificate to teach until December 1996, the only service Epstein could perform under the law was that of substitute teacher.

The Association asserts that the dispute involves a compensation issue only since Epstein in fact taught full-time throughout the school year.

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

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

The Association is arguing that Epstein performed all the duties of a supplemental teacher for the entire school year and that the Board could legally agree to compensate her retroactively at step one of the salary guide for the entire year once she received a supplemental teacher's contract. That compensation claim is separate from any prerogative the Board may have had not to grant Epstein a supplemental teacher's contract before it did so or any claim that Epstein could have been considered a tenure-eligible teacher under education law before she received her provisional certificate. See Long Branch Bd. of Ed., P.E.R.C. No. 95-1, 20 NJPER 314 (¶25158 1994) (board had a prerogative not to hire a regular matron until it completed interviews); Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980), aff'd NJPER Supp.2d 118 (¶98 App. Div. 1982) (whether person should be paid as supplemental teacher according to negotiated salary guide is independent of teacher's tenure eligibility).


Compensation is the prime example of a mandatorily negotiable employment condition. Woodstown-Pilesgrove Reg. H.S. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); Belleville Bd. of Ed. v. Belleville Ed. Ass'n, 209 N.J. Super. 93 (App. Div. 1986). Epstein indisputably taught throughout the 1996-97 school year and the only question presented by this grievance is whether she was properly paid for her work under the parties' agreement. Epstein having done all the work of a regular

teacher for the full year, we see no reason why a negotiated agreement could not specify that she should be paid retroactively as a regular teacher for the full year. See Long Branch (while matron initially hired as a temporary employee was not entitled to receive a permanent appointment earlier, once hired as a permanent employee she could seek retroactive compensation at permanent employee salary rate); see also Passaic Bd. of Ed., P.E.R.C. NO. 90-3, 15 NJPER 490 (¶20200 1989); We reiterate that we make no judgment concerning whether such an agreement exists. We accordingly decline to restrain arbitration.

ORDER

The request of the Evesham Township Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Boose abstained from consideration.

DATED: May 27, 1998
Trenton, New Jersey
ISSUED: May 28, 1998