

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DEPTFORD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-23

DEPTFORD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines in a grievance arbitration context, that the posting of vacancies provisions of the collective negotiations agreement between the parties is both negotiable and arbitrable in that the language of the relevant clause does not inhibit the Board's discretion in determining who to hire. With respect to the validity of a remedy sought by the Association, the Commission believes it would unduly interfere with the integrity and goals of the arbitration process for the Commission to rule on hypothetical awards. In accord with pertinent Court and Commission decisions, the Commission believes appropriate procedures exist for review of an arbitration award.

Accordingly, the Commission concludes that the instant matter may be submitted to binding arbitration if otherwise arbitrable under the parties' contract.

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Appearances:

For the Petitioner, Capehart & Scatchard, P.A.
(Alan R. Schmoll, Esquire)

For the Respondent, New Jersey Education Association
(Eugene J. Sharp, UniServ Representative)

DECISION AND ORDER

On October 22, 1980, the Deptford Township Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Deptford Education Association (the "Association") are within the scope of collective negotiations. In the instant dispute the Association seeks to submit to binding arbitration an alleged Board violation of the posting of vacancies provision of the collective negotiations agreement between the parties. The Association alleges the Board appointed an individual to the position of Physical Education teacher/Athletic Director without first posting a notice of vacancy as required by the contract. In its requested relief before the arbitrator, the Association seeks rescission of the Board action and to have the Board follow the negotiated posting procedure.

The Board objects to the arbitration of the dispute, asserting that the hiring of personnel is a management prerogative neither negotiable nor arbitrable. Citing Board of Education of the Township of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976). Moreover, the Board argues, that rescission of the appointment is beyond the remedial authority of an arbitrator.

We have held that procedural posting of vacancy provisions relating to teacher assignments and transfers by the employer are mandatorily negotiable. In re Fairview Board of Education, P.E.R.C. No. 80-14, 5 NJPER 347 (¶10182 1979). Similar holdings have been made by the Courts in the areas of evaluation procedures, and promotional procedures. See, e.g., State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90-91 (1978) and Fair Lawn Board of Education v. Fair Lawn Ed. Ass'n, 174 N.J. Super 554 (App. Div. 1980), which affirmed P.E.R.C. No. 79-88, 5 NJPER 225 (¶10124 1979).

In other cases we have indicated that notwithstanding the negotiability of such subjects that contractual provisions on notice and other procedural protections may be non-negotiable if they go so far as to specifically bar effectuation of a transfer or assignment until compliance with their terms has been achieved. In re Monroe Township Board of Education, P.E.R.C. No. 80-146, 6 NJPER 301 (¶11143 1980); In re East Orange Board of Education, P.E.R.C. No. 81-25, 6 NJPER 435 (¶11220 1980).

In its brief, the Association concedes the Board's right to determine who is hired and states that it grieves only

the employer's failure to comply with the contract notice requirement of posting vacancies. Our review of the language of the relevant clause indicates that it does not inhibit the Board's discretion in determining who to hire.^{1/} We therefore find the grievance alleging a violation of that clause to be negotiable and arbitrable.

With respect to the Board's request that we rule on the validity of the remedy sought by the Association in the arbitration, we believe that it would be inappropriate to rule on that at this time. In prior decisions we have refused to be drawn into such hypothetical discussions. See Fair Lawn Board of Education, supra;^{2/} In re East Orange Board of Education, supra and In re Fairview Board of Education, supra. There is no assertion by either party, nor does our review of the contractual grievance procedure indicate, that the arbitrator

^{1/} The 1978-1980 collective negotiations agreement between the parties contains Article XII, titled "Transfer, Assignment and Reassignment," which reads in relevant part: "Section 7. Vacancies and/or new positions as defined in this Article shall be announced by posting in the schools as a vacancy or new position occurs. Vacancies created by teacher reassignment need not be posted. Applications shall be made in writing to the Superintendent of Schools."

^{2/} In the Fair Lawn case, one of the Board's arguments on appeal was that the arbitrator's remedy on the Association's grievance might be inconsistent with a ruling of the Commissioner of Education as the individual teacher had filed an appeal of the Board's action in that forum. The Court's rejection of that argument is relevant here.

"Any possible conflict in a proper exercise by each of its remedial jurisdiction need not be now anticipated, can be resolved by the court if and when it actually occurs, and cannot, by way of anticipation, foreclose either litigant from pursuing its chosen course...There is therefore, no basis we perceive which would have warranted PERC in restraining the arbitration the Association here seeks." 174 N.J. Super at 560. As we indicated in our decision in that case, appropriate procedures exist if either party believes the arbitrator improperly exercised or exceeded his or her authority.

is limited to the remedy sought by the Association in its initial grievance or demand for arbitration. If the contractual clause and the grievance arising therefrom are both negotiable and arbitrable, we believe it would unduly interfere with the integrity and goals of the arbitration process for the Commission to rule on hypothetical awards.

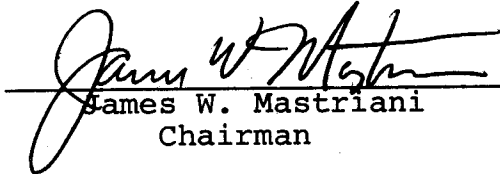
The goal of arbitration is to afford the parties an expeditious and uncomplicated method for the resolution of their disputes in a forum agreed upon and designed by them during their negotiations. If the Commission were to begin ruling on the appropriateness of potential remedies before the merits of the grievance have even been decided, it would only open another area of litigation and would jeopardize the value of arbitration. Even if the grievance were determined to have merit the remedy awarded by an arbitrator would be, in part, a function of the particular facts which exist at the time of the award. Until a remedy, if any, has been awarded by an arbitrator, there is no actual matter in dispute upon which the Commission could rule. See N.J.S.A. 34:13A-5.4(d). As both the Commission and the Appellate Division indicated in the Fair Lawn case, supra, appropriate procedures existed at the time if either party believes the arbitrator improperly exercised or exceeded his or her authority.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the instant grievance of the Deptford Education Association is negotiable and arbitrable and may be submitted to binding

arbitration if otherwise arbitrable under the parties'
contract.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett and Parcels voted
in favor of this decision. None opposed. Commissioners Hipp
and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981