

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAHWAY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-79-9

RAHWAY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission in a Scope of Negotiations Proceeding initiated by the Rahway Board of Education concludes that a salary increment is a term and condition of employment and therefore finds that a dispute concerning the denial of a salary increment is one which may be submitted to arbitration, pursuant to the procedures contained in the parties' contract, if otherwise arbitrable under the parties' agreement. The Commission further finds that the 1974 amendment of N.J.S.A. 34:13A-5.3 which added the "notwithstanding" sentence supersedes the appeal procedure relating to the withholding of increments in N.J.S.A. 18A:29-14 and therefore permits the arbitration of the denial of a salary increment, despite the existence of the dispute resolution procedure set forth in N.J.S.A. 18A:29-14.

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Appearances:

For the Petitioner, Magner, Abraham, Orlando,  
Kahn & Pisansky, Esqs.  
(Leo Kahn, Esq., on the Letter Memorandum of Law)

For the Respondent, Goldberg & Simon, Esqs.  
(Gerald M. Goldberg, Esq., on the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-79-9, was filed with the Public Employment Relations Commission (the "Commission") on September 19, 1978 by the Rahway Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the Board and the Rahway Education Association (the "Association") is 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"). The Board in its Letter Memorandum dated September 13, 1978, submitted along with its Scope Petition, framed the issue before the Commission as a question concerning

the negotiability and arbitrability of the withholding of increments of teaching staff members pursuant to N.J.S.A. 18A:29-14.<sup>1/</sup> The Board initially sought a temporary stay of arbitration relating to the withholding of increments issue pending a final administrative determination by the Commission on the Scope of Negotiations Petition.

At a conference held on October 23, 1978 the Special Assistant to the Chairman, Stephen B. Hunter, acting as the Commission's named designee, informed the Board, after consideration of the parties' written submissions, apposite judicial decisions and oral argument by the parties, that he was not prepared to grant the Board's request for a temporary stay of arbitration. The parties informally agreed, however, to a voluntary stay of arbitration pending the Commission's final administrative decision relating to the withholding of increments question.

As stated above, the Board submitted along with its Scope of Negotiations Petition a Letter Memorandum dated September

1/ N.J.S.A. 18A:29-14 provides: "Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment. (emphasis added)

13, 1978 enunciating its position in this matter. The Association submitted a brief in opposition to the Board's request for interim relief dated October 18, 1978 that also set forth the Association's position concerning the negotiability and arbitrability of the withholding of increments pursuant to N.J.S.A. 18A:29-14.

The facts are uncontroverted in this proceeding. Pursuant to N.J.S.A. 18A:29-14 the Board withheld salary increments from three teaching staff members for the 1977-78 school year. These actions were grieved by the Association and subsequently requests for arbitration were made by the Association to the American Arbitration Association (the "AAA"). The Association essentially alleged that the Board did not withhold the increments of the three affected teachers for "inefficiency or other good cause". Initially the parties voluntarily agreed to ask that arbitration be delayed pending a decision by the New Jersey Supreme Court in a similar matter. However, on August 25, 1978, the Association asked the AAA to proceed to arbitration in light of certain judicial developments at that time. Shortly thereafter the Scope Petition and request for temporary restraints was filed by the Board.

The Board urged that the Commission grant its request for a temporary stay in light of the pendency of a similar matter before the New Jersey Supreme Court, Board of Education of the Township of Bernards, Somerset County v. Bernards Township Education Association, American Arbitration Association, NJEA and Samuel Ranhand, Law Div. Docket No. L-3416-76, affirmed App. Div.

Docket No. A-1737-76 (1978) (Unpublished Opinion), appeal pending in Supreme Court, Docket No. 14,541. The Appellate Division in the Bernards Township case held that since N.J.S.A. 18A:29-14 provided a forum for the appeal of a denial of an increment, i.e. an appeal to the Commissioner of Education under rules prescribed by him, it was illegal for the parties to agree in negotiations to the alternative forum of the grievance/arbitration procedure in the contract. The Court relied upon Board of Education of Piscataway v. Piscataway Maintenance and Custodial Association, 152 N.J. Super. 235 (App. Div. 1977) and Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976) to support its conclusion. The Appellate Division in this matter without explanation dismissed pertinent provisions of N.J.S.A. 34:13A-5.3 as limited to situations where no specific appeal procedures were provided by a section of the Education Laws, Title 18A.<sup>2/</sup> The

<sup>2/</sup> N.J.S.A. 34:13A-5.3 provides in relevant part: "Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes. Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. (The underlined portion of this statute represents the Chapter 123 Laws of 1974 amendments to N.J.S.A. 34:13A-5.3. This sentence will hereinafter be referred to in this decision as the "notwithstanding" clause.)

Board, however, noted that in a similar situation another part of the Appellate Division determined that the individual withholding of an increment was not a major educational policy and was an appropriate subject for arbitration. Board of Education of the School District of the Township of Edison v. Edison Township Education Association, 151 N.J. Super. 155 (1978), pet. for cert. pending. The Board urged that the Commission grant a temporary stay of arbitration pending the Supreme Court's decision in the Bernards Township case, in order to avoid the waste of time and money in arbitrating an issue that could subsequently be struck down by the Supreme Court as being an illegal subject for collective negotiations.

The Association, citing the Edison Township decision and a New Jersey Supreme Court decision, Township of West Windsor v. PERC and PBA Local 130, 78 N.J. 98 (1978), submitted that the action of withholding a salary increment was a matter which intimately and directly affected the work and welfare of public employees and one which, concerned exclusively with the compensation and discipline of individual employees, presented no significant interference with the establishment of educational policy. The Association specifically cited language within the West Windsor decision which stated that pursuant to N.J.S.A. 34:13A-5.3, as amended by Chapter 123, Laws of 1974,<sup>3/</sup> grievance procedures negotiated by the parties would supplant statutory dispute

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<sup>3/</sup> See Footnote 2, supra.

resolution mechanisms insofar as the matter in dispute related to a mandatory subject for collective negotiations. The Association thus concluded that the grievance procedure that it negotiated with the Board, providing for binding arbitration at the terminal step, prevailed over the appeal procedure specified in N.J.S.A. 18A:29-14 pertaining to the withholding of salary increments.

This Commission itself has previously considered the question of the negotiability of the withholding of salary increments. See In re East Brunswick Board of Education, P.E.R.C. No. 77-6, 2 NJPER 279 (1976).

After careful consideration of the parties' submissions in this matter the Commission again concludes that salary increments are a term and condition of employment and therefore a dispute concerning the denial of a salary increment is one which may be submitted to arbitration, pursuant to the procedures contained in the parties' contract, if otherwise arbitrable under the parties' agreement.<sup>4/</sup> We further find that the 1974 Amendment of N.J.S.A.

<sup>4/</sup> See Galloway Twp. Board of Education v. Galloway Twp. Education Assn., 78 N.J. 25 (1978) and Board of Education of Englewood v. Englewood Teachers, 64 N.J. 1 (1973).

The fact that salary increments are a term and condition of employment does not mean that every aspect of the subject is mandatorily negotiable. As is made clear in State of New Jersey v. State Supervisory Employees Assn., 78 N.J. 54 (1978), negotiations over admitted terms and conditions of employment may not contravene the provisions of specific statutes. Therefore the right of a board of education to withhold a salary increment for "inefficiency or other good cause" is not negotiable despite its direct relationship to a term and condition of employment. See Clifton Teachers Association v. Clifton Board of Education, 136 N.J. Super. 336 (App. Div. 1975). In the instant matter we are not concerned with an effort to negotiate away the right of a board (continued)

34:13A-5.3 which added the "notwithstanding" sentence supersedes the appeal procedure relating to the withholding of increments in N.J.S.A. 18A:29-14 and therefore permits the arbitration of the denial of a salary increment despite the existence of the dispute resolution procedure set forth in N.J.S.A. 18A:29-14.<sup>5/</sup>

In the Supervisory Employees case, 78 N.J. 54 at 80, the Supreme Court, in a footnote, indicates the distinction between statutes establishing substantive terms and conditions of employment and laws in part delineating a forum for the resolution of disputes relating to these terms and conditions of employment, stated the following:

A significant exception to our holding that terms and conditions of employment set by statute are not subject to negotiated modification involves statutes which provide for dispute-resolution mechanisms for particular types of employee complaints. To the extent these statutes may be viewed as setting specific terms and conditions of employment, the Legislature has expressly sanctioned deviation from those statutory procedures by providing in the 1974 amendments to N.J.S.A. 34:13A-5.3...that they shall be superseded by the grievance procedure negotiated between the parties for the resolution of disputes concerning the terms and conditions of public employment.

4/ (continued)

to withhold increments for the statutory reasons of "inefficiency or other good cause." The present case deals with the issue of arbitrating the propriety of a board of education's finding that certain teachers be denied increments for inefficiency or other good cause. In this context, the propriety of the board of education's actions concerning the teachers does not involve a managerial policy decision, but concerns the issue of whether the statutory criteria of inefficiency or other good cause has been demonstrated as a justifiable reason for the denial of salary increments. See Edison Township, supra.

5/ The Commission submitted a brief on behalf of Amicus Curiae in the Bernards Township case, supra, pending before the New Jersey Supreme Court, that in considerable detail more thoroughly enunciates the Commission's analysis of the negotiability and arbitrability of the denial of a salary increment.



For the same reason, these particular types of statutes may not be considered as implicit terms of any collective agreement covering employees to whom the statutory dispute resolution procedures would be available. The parties are, of course, free to expressly adopt the statutory mechanisms as their contractual grievance procedure if they so choose.

Consistent with the above, we conclude that the provision in N.J.S.A. 18A:29-14 for the appeal of the withholding of salary increments to the Commissioner of Education is precisely the type of statute contemplated by the Supreme Court which resolves the conflict between the Edison and Bernards Appellate Division decisions in favor of the Edison holding.

Any doubt as to the meaning of the portion of the Supervisory Employees case cited above is resolved by a reading of the Township of West Windsor opinion. That opinion analyzed the required scope of negotiated grievance procedures under the language of N.J.S.A. 34:13A-5.3. The Court in reaching its conclusions discussed the scope of the agreements or awards reached in the grievance procedure or arbitration forum. The Court cited its holding in the Supervisory Employees case and stated that these results could not contravene specific statutes or go beyond terms and conditions of employment into areas of educational or governmental policy. The Court then concluded the following:

By reason of our holding today, the terms of all negotiated grievance procedures must 'cover' grievances concerning the 'interpretation, application or violation of policies, agreements and administrative decisions' affecting the terms and conditions of public

employment. The negotiated grievance procedures to which the amendment [the "notwithstanding" sentence of N.J.S.A. 34:13A-5.3] accords primacy will therefore supplant statutory dispute resolution mechanisms only as to disputes of the type enumerated in N.J.S.A. 34:13A-5.3 which directly and intimately impact upon the terms and conditions of public employment. <sup>6/</sup>  
(78 N.J. 98 at 117) (emphasis added)

The Commission thus concludes that it would not effectuate the policies of the Act, in consideration of the explicit statements within the above cited recent Supreme Court decisions, to stay the arbitration in the instant matter during the pendency of the Bernards Township appeal. Our conclusion is buttressed by the fact that this is not a case of first impression for the Commission. We have previously held that the withholding of increments is mandatorily negotiable.

<sup>6/</sup> It is arguable that the language of N.J.S.A. 18A:29-14 using the phrase "may appeal" is not even the type of statute which would preclude the negotiations of alternative terms and conditions of employment, even in the absence of the "notwithstanding" clause within N.J.S.A. 34:13A-5.3.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the matter in dispute, the withholding of individual salary increments, is a required subject for collective negotiations and is arbitrable if otherwise arbitrable under the parties' agreement. The Board of Education's request for a restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained and Commissioner Graves was not present.

DATED: Trenton, New Jersey  
December 14, 1978  
ISSUED: December 15, 1978