

P.E.R.C. NO. 95-79

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-46

CITY ASSOCIATION OF SUPERVISORS  
AND ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the Newark Board of Education. The Board seeks a determination that an arbitration award in favor of the City Association of Supervisors and Administrators is outside the scope of collective negotiations. That award requires the Board to pay extra compensation to department chairpersons who are assigned to perform scheduling duties normally performed by vice-principals. The Commission lacks jurisdiction to consider post-arbitration petitions unless a proceeding to confirm, modify, or vacate the award has been initiated in Superior Court and the Court has then referred the scope issues to the Commission.

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.

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Appearances:

For the Petitioner, Charles I. Auffant, Associate Counsel

For the Respondent, Anthony P. Sciarrillo, attorney

DECISION AND ORDER

On November 4, 1994, the Newark Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that an arbitration award in favor of the City Association of Supervisors and Administrators is outside the scope of collective negotiations. That award requires the Board to pay extra compensation to department chairpersons who were assigned to perform scheduling duties normally performed by vice-principals.

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

CASA represents the Board's administrative personnel, including department chairpersons and vice-principals. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

On December 13, 1993, CASA filed a grievance. The grievance asserted that a department chairperson (Ted Pinckney) was entitled to receive extra compensation for performing the scheduling duties of a vice-principal at West Kinney Alternative High School from August 24, 1993 to the date the grievance was filed. The Board denied the grievance and CASA demanded arbitration.

On October 5, 1994, the parties entered a stipulation settling this grievance. The stipulation stated that Pinckney would receive the difference between his salary as department chairperson and the comparable salary of a vice-principal for the time spent performing scheduling duties; the Board and CASA would meet to determine whether other department chairpersons were situated similarly to Pinckney; if Pinckney and other department chairpersons continued to perform scheduling duties, they would be paid at a vice-principal's rate; and the arbitration panel would retain jurisdiction to resolve any dispute over implementing the settlement.

A dispute arose over whether the parties' contract and settlement agreement obligated the Board to pay department chairpersons extra compensation for scheduling duties performed during the school year. Those duties include providing schedules for new and transfer students and maintaining monthly registers. The Board took the position that its obligation was limited to paying for work performed during the summer recess when department chairpersons devoted all their time to preparing the master schedules. CASA then moved to reopen the arbitration proceeding.

On October 24, 1994, an arbitration hearing was held. The arbitration panel consisted of a neutral arbitrator, a CASA-appointed arbitrator, and a Board-appointed arbitrator. At the outset of the hearing, the Board moved to postpone the arbitration proceeding until it filed a scope of negotiations petition and received a Commission decision. That motion was denied and the Board's attorney and the Board-appointed arbitrator then left the hearing. The hearing proceeded without them.

On October 27, 1994, the two remaining panelists issued an award in CASA's favor. The award ordered the Board to pay Pinckney and the department chairpersons at a vice-principal's rate for the scheduling duties they had performed and would continue to perform during the school year. The award did not prohibit (and CASA does not seek to prohibit) the Board from assigning scheduling duties to department chairpersons.

On November 4, the Board filed this petition.

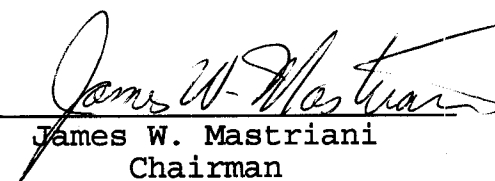
In Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983), we dismissed a scope of negotiations petition filed after an arbitration award had already been issued. We held that we lack jurisdiction to consider post-arbitration petitions unless a proceeding to confirm, modify, or vacate the award has been initiated in Superior Court and the Court has then referred the scope issue to us. Ocean Tp. applies and requires dismissal of this petition challenging the arbitration award. See also East Brunswick

Principals and Supervisors Ass'n v. East Brunswick Bd. of Ed., NJPER Supp.2d 285 (1229 App. Div. 1992) (party should not be permitted to await outcome of arbitration and then launch jurisdictional attack if it does not prevail).

ORDER

The scope of negotiations petition filed by the Newark Board of Education is dismissed.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: March 24, 1995  
Trenton, New Jersey  
ISSUED: March 27, 1995