

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-80-86

EAST ORANGE EDUCATION
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Love & Randall, Esqs.
(Mr. Melvin Randall, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on February 4, 1980 by the East Orange Board of Education (the "Board"). The Petition alleges that a dispute existed concerning the negotiability and arbitrability of two grievances which the East Orange Education Association (the "Association") sought to submit to binding arbitration pursuant to the collectively negotiated agreement between the Board and the Association.

The grievances in question concern the identity of individuals who perform evaluations. The grievances state that

P.E.R.C. NO. 80-154

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SYNOPSIS

In a scope of negotiations determination, the Chairman permanently restrains the Association from submitting a grievance concerning the identity of an evaluator to binding arbitration. The Commission has held that the issue of who may evaluate teachers is a management prerogative not subject to the duty to negotiate and therefore not arbitrable.

"The Board and/or its designees ordered 'Supervisors' to evaluate classroom teachers. This is in direct violation of Article XVII, Section G1 and 8, Section V-G, Article III, Section C-3 of the Agreement and any other articles which may apply." A demand for arbitration was filed by the Association which prompted the filing of the instant scope petition by the Board together with an order to show cause and verified complaint requesting that the Respondent be enjoined from proceeding to binding arbitration. A response brief was filed by the Association on April 7, 1980.

The Board requests that we permanently restrain the arbitration because the issue of who evaluates the classroom teachers is a major educational policy decision and a managerial prerogative. The Association's position is that negotiations to determine the identity of the evaluator concern evaluation procedures which are mandatorily negotiable.

In two recent decisions, In re Fairview Board of Ed., P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979) and Bethlehem Twp. Ed. Assn v. Bethlehem Twp. Board of Ed., P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), appeal pending App. Div. Docket No. A-4582-78, the Commission ruled upon the negotiability of a substantially similar provision affecting tenured teachers relating to the requirement that only certificated supervisors evaluate these teachers. The Commission concluded that the

issue of who may evaluate tenured teachers has been preempted by the regulation in N.J.A.C. 6:3-1.21(h)(1)^{1/} and is not negotiable.

The Commission in an earlier decision, In re Borough of Roselle, P.E.R.C. No. 77-66, 3 NJPER 166 (1977), held that an employer was not required to negotiate concerning which individuals would have the responsibility to oversee certain management prerogatives, e.g. the evaluation of employees. In light of the Bethlehem, Fairview and Roselle decisions, the undersigned concludes that the identity of the person responsible for conducting substantive evaluations of tenured as well as non-tenured teaching personnel is not negotiable.^{2/}

Therefore, in addition to negotiations on the subject being prohibited as to tenured personnel because the subject is preempted by regulation, negotiations are prohibited as to all

^{1/} This provision states that: "Appropriately certified personnel means personnel qualified to perform duties of supervision which includes the superintendent, assistant superintendent, principals, vice-principals, and supervisors of instruction who hold the appropriate certificate and who are designated by the board to supervise instruction."

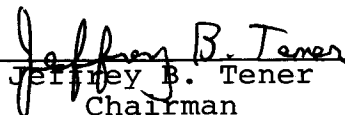
^{2/} The Commission in In re Ridgefield Park Bd of Ed, P.E.R.C. No. 77-71, 3 NJPER 303 (1977), referred to "the identification of the evaluator" as a procedural issue that was mandatorily negotiable. The aforementioned Bethlehem and Fairview decisions have modified the meaning of the above-cited Ridgefield Park language, i.e. that negotiations concerning the amount of notice to be given identifying the person designated by the employer to conduct evaluations are mandatorily negotiable, while negotiations as to who that individual would be are not mandatorily negotiable.

teaching personnel because the designation of a person responsible for the effectuation of management decisions is a management prerogative.

ORDER

For the above reasons, IT IS HEREBY ORDERED that the East Orange Education Association is permanently restrained from submitting the grievance concerning the identity of the evaluator to binding arbitration.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
June 20, 1980