

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket No. SN-77-26

CINNAMINSON TEACHERS' ASSOCIATION,  
Respondent.

SYNOPSIS

In a Decision and Order on Motion in a scope of negotiations matter the Commission denies the Teachers' Association's request to dismiss that part of the Board of Education's scope petition relating to the issue of the negotiability of a reduction in force provision included in the parties' present agreement. The Teachers Association had contended that there was no actual dispute between the parties concerning the application or interpretation of this particular provision. The Commission concurs with the Association that the authority under N.J.S.A. 34:13A-5.4(d) does not extend to the issuance of advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to potential, controversy. The Commission concludes, however, that there are "special circumstances" that require that the Commission issue scope of negotiations determinations relating to contractual provisions that may not be either the subject of negotiations for a successor contract or the subject of an arbitration request. Where a petitioner has made a prima facie showing that 1) a particular clause in a contract has been declared to be an illegal, as opposed to a mandatory or permissive, subject of collective negotiations by an intervening Commission or judicial decision or 2) specific legislation mandates the conclusion that a particular contractual provision is an illegal subject for collective negotiations, the Commission will assert jurisdiction over that matter and will render, where appropriate, a scope of ~~collective~~ negotiations determination on the issue or issues in dispute. The Commission finds with reference to the reduction in force issue that the Board of Education had made a prima facie showing that the clause at issue in the contract between the parties had been declared to be an illegal subject of collective negotiations as a result of judicial action.

The Commission concludes, however, that the Association's request to dismiss those portions of the Board's scope petition relating to salary guides for teaching personnel and for non-certificated personnel should be granted. The Commission states in its regard that it is uncontroverted that the Board in its petition

with reference to these guide issues merely sought guidance for the future and was not asserting the existence of any present dispute relating to these issues.

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Appearances:

For the Petitioner, Murray, Meagher & Granello, Esqs.  
(James P. Granello, of Counsel)

For the Respondent, Robert H. Chanin, Esq.

DECISION AND ORDER ON MOTION

A Petition for Scope of Negotiations Determination, Docket No. SN-77-26, was filed with the Public Employment Relations Commission (the "Commission") on February 10, 1977, by the Cinnaminson Township Board of Education (the "Board") seeking a determination as to whether certain matters were within the scope of collective negotiations.

In its petition, the Board specifically requested a ruling on the negotiability of three issues that were included in the collective negotiations agreement in effect between it and the Cinnaminson Teachers' Association (the "Association") covering the period between July 1, 1976 through June 30, 1978. This particular agreement was ratified by the parties on or about September 16, 1976. These issues included a reduction-in-force provision set forth in Article XXV of the agreement, the concept of a salary guide relating to teaching personnel containing steps representing years of experience and degree attainments memorialized in salary schedule S-1 of the contract, and the concept of a

salary guide for secretaries, clerks and librarian aides set forth in salary schedule S-2 of the aforementioned agreement. In addition, the Board sought a determination as to whether a disputed matter involving release time for parent-teacher conferences which the Association sought to submit to arbitration was within the scope of collective negotiations.

The Board submitted a brief in support of its scope petition dated February 14, 1977. The Board filed a supplemental memorandum in support of its petition dated June 17, 1977. Pursuant to the joint agreement of the parties, the Association was granted a lengthy extension of time in which to file its brief in this instant matter. On August 9, 1977, the Association filed a request to dismiss the Board's petition for a scope of negotiations determination. The Association essentially concluded that the Board's scope petition was not properly brought pursuant to Chapter 13 of the Commission's Rules and asserted that the Commission should dismiss this matter without reaching the merits. In correspondence dated August 12, 1977, the Board opposed the Association's dismissal request. Furthermore, in a letter dated August 29, 1977, the Board withdrew its request for a determination of the negotiability of the release time issue, inasmuch as that matter had already been resolved through binding arbitration.

The Association in its submissions maintains that the present proceeding was not properly brought before the Commission pursuant to Chapter 13 of the Rules of the Commission relating to scope of negotiations proceedings. The Association submits that no dispute exists between the parties as to any of the matters raised in the Board's petition and that the Board is merely seeking to obtain from the Commission advisory opinions regarding "a series of abstract questions" that are not properly cognizable by the Commission. More specifically, the Association states that the power granted to the Commission concerning scope of negot-

iations determinations is directly analogous to that given to the courts by the New Jersey Declaratory Judgments Act [N.J.S.A. 2:26-66 through 79]. The Association cites decisions that have been handed down with reference to the Declaratory Judgments Act that have established that this particular mechanism cannot be used to decide or determine rights of particular parties to a proceeding upon a set of facts which are future, contingent and uncertain. The Association contends with reference to the reduction-in-force issue that no actual dispute arose concerning the application or interpretation of this provision within the contract between the parties, and that the Board in fact had proceeded, with reference to the 1976-77 school year, to follow the provisions of Article XXV of the agreement between the parties concerning reductions in force. With specific reference to the salary guide issues, the Association states that the Board conceded in its petition that its request for a scope of negotiations determination related only to a possible future dispute as opposed to an actual dispute between the parties.

The Board of Education, in response to the Association's request for the dismissal of the scope petition filed by the Board, in part, alleges that the Association should be estopped from raising this issue in light of previous agreements reached between the parties relating to the submission of briefs concerning this instant matter. With regard to the merits of the Association's dismissal request, the Board asserts that the Association's claim that the statutory focus on actual as opposed to potential controversies is reflected in the Commission's Rules is without legal merit. The Board, with reference to the reduction-in-force issue, contends that when the Board of Education filed its scope petition in February of 1977 there existed an actual controversy between the parties as to whether the Board had to comply with the provisions of Article XXV on reductions in force or whether this agreement

was ultra vires in light of a decision of the Appellate Division entitled Union County Regional High School Board of Education v. Union County Regional Teachers Association, 145 N.J. Super. 495 (App. Div., 1976); certification denied \_\_\_\_\_ N.J. \_\_\_\_\_ (1977). With reference to the salary guide issues, the Board submitted that the legislative scheme embodied in the New Jersey Employer-Employee Relations Act imposed on the Commission full responsibility for forestalling and resolving both potential and actual labor disputes involving public employees. The Board contends that with regard to these salary guide issues, the Commission is therefore obligated to give guidance to the parties prior to the initiation of negotiations for a successor agreement that it is alleged will commence in September of 1977. The Board further contends that any delay in rendering a determination on the merits concerning the matters at issue in this petition would have the effect of protracting negotiations between the parties and would not lend itself to an expeditious disposition of the issues presented, contrary to the intendment of the Act and the Commission's Rules.

After careful consideration of the parties' submissions with reference to the Association's request for the dismissal of the Board's scope petition in the instant matter, the Commission concludes that with reference to the reduction-in-force issue there is a matter in dispute within the intendment of N.J.S.A. 34:13A-5.4(d).

The Commission concurs with the Association that its authority under 5.4(d) does not extend to the issuance of advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to potential, controversy. The Commission recognizes that negotiability disputes requiring a Commission scope determination will normally arise in two ways. Perhaps the most common arena is at the negotiations table, where, typically, the public employer will resist negotiating with respect to a given subject matter on the theory that it

relates to managerial prerogatives and not terms and conditions of employment. Secondly, disputes have arisen in the context of a negotiated grievance procedure. Typically the employee representative will seek to grieve the matter, and ultimately to have the matter arbitrated, which the public employer contends is a matter of managerial prerogative and not a term or condition of employment. In this context, the public employer will claim that the matter at issue may thus not legally be included in a contract and likewise may not legally be submitted to an arbitrator, as the public employer's statutory management responsibilities may not be abdicated or delegated.

The Commission however concludes that in addition there are "special circumstances" that require that the Commission issue scope of negotiations determinations relating to provisions of an existing contractual agreement that may not be presently the subject of negotiations for a successor contract or the subject of an arbitration request. Where a petitioner has made a prima facie showing that (1) a particular clause in a contract has been declared to be an illegal, as opposed to a mandatory or permissive, subject of collective negotiations by an intervening Commission or judicial decision or (2) specific legislation mandates the conclusion that a particular contractual provision is an illegal subject for collective negotiations, <sup>1/</sup> the Commission will assert jurisdiction over that matter and will render, where appropriate, a scope of negotiations determination on the issue or issues in dispute. If the Commission refuses to entertain scope applications of this type, the would-be petitioner in a scope proceeding may simply refuse to follow the contractual provisions at issue, often necessitating the filing of an unfair practice charge by the employee representative

<sup>1/</sup> The Commission has determined in recent decisions that the changes effectuated in N.J.S.A. 34:13A-8.1 by Chapter 123, Public Laws of 1974 meant that general statutes giving authority to employers are not to be read as shields to the employer's obligation to negotiate regarding terms and conditions of employment, but specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations. See In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER \_\_\_\_ (1977) and cases cited therein.

of the affected employees. The Commission believes that to best effectuate the purposes of the Act it is preferable under the above circumstances to work within the non-adversarial scope of negotiations process, a procedure that is considerably more expeditious than unfair practice litigation and often not as provocative.

To further illustrate the need for the consideration of the above-mentioned "special circumstances," one may look no further than at the facts relating to the reduction-in-force provision in the instant proceeding. On June 14, 1976, the Commission in In re Union County Regional High School Board of Education, et al, P.E.R.C. No. 76-43, 2 NJPER 221 (1976), determined in apposite part, that boards of education were required to negotiate upon demand concerning the procedures to be followed in selecting unit employees who would not be employed pursuant to a reduction in force, within the limitations set forth in this particular decision, and further required that boards of education negotiate upon demand concerning the re-employment rights of the teachers terminated as a result of the decision to reduce teaching staff. The Board and the Association in the instant matter, as stated before, executed the present agreement containing the disputed reduction-in-force clause on or about September 16, 1976. On December 10, 1976, the Appellate Division rendered its decision in the aforementioned Union County Regional matter, which reversed the earlier Commission decision and stated in part that the Commission was without authority to compel boards of education to negotiate criteria or guidelines to be used in selecting which nontenured teachers are to be dismissed as a result of a reduction in force or to compel negotiations on re-employment rights of its teachers who are dismissed. Shortly thereafter in February of 1977, the Board of Education filed its scope petition seeking an adjudication as to



whether the reduction-in-force provision within the contract between the Board and the Association was either a permissive or an illegal subject of collective negotiations. <sup>2/</sup> It is certainly arguable that if the Board of Education in the instant matter could not have availed itself of the scope of negotiations mechanism because of procedural constraints, it may well have been compelled to have violated the procedures set forth in Article XXV on reductions in force in order to get a determination from the Commission related to an unfair practice charge as to whether the matters at issue concerned illegal or permissive subjects of collective negotiations. Instead, it is uncontroverted that the Board of Education complied with the existing procedures relating to reductions in force and chose to resolve the negotiability issue through the non-adversarial scope of negotiations process.

In conclusion, the Commission finds that with reference to the reduction-in-force issue the Board of Education has made a prima facie showing that the clause at issue in the contract between the parties has been declared to be an illegal subject of negotiations as a result of judicial action. The Commission therefore finds that it does have jurisdiction to render a determination on this issue. The Commission will permit the Association as per its request to file a supplemental brief with regard to the merits relating to the reduction-in-force question that will be due on or before Thursday, September 22, 1977. The Board will be permitted to file a further reply brief that will be due on or before Thursday, September 29, 1977.

After careful consideration of the parties' submissions with reference to the salary guide issues the Commission concludes that there is no present dispute concerning the negotiability of these matters. It is uncontroverted

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<sup>2/</sup> The Board contended that it was a clear import of the Appellate Division's decision that the reduction-in-force clause set forth in Article XXV was illegal on its face.

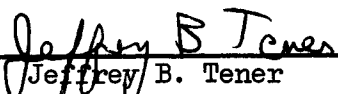
that the parties have concluded agreements in the 1976-78 agreement relating to salary guides for teaching personnel, as well as for secretaries, clerks and aides. It is further uncontroverted that the Board in its petition with reference to these issues merely sought guidance for the future and was not asserting the existence of any present dispute relating to these issues. The Commission further finds that the Board has advanced no "special circumstances" that would mandate a contrary conclusion. The Commission therefore grants the Association's motion to dismiss those aspects of the Board's scope petition that request a determination relating to the negotiability of salary guides for teaching personnel and non-certificated personnel. The Board of Education may file a scope of negotiations petition with reference to these issues if a dispute actually develops concerning these matters in future negotiations.

ORDER

The Cinnaminson Teachers' Association's request to dismiss that part of the Cinnaminson Township Board of Education's petition relating to the issue of reductions in force is hereby denied.

The Cinnaminson Teachers' Association's request to dismiss those portions of the Cinnaminson Township Board of Education's scope of negotiations petition relating to salary guides for teaching personnel and for secretaries, clerks and librarian aides is hereby granted in conformity with the above decision.

BY ORDER OF THE COMMISSION

  
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 Jeffrey B. Tener  
 Chairman

Chairman Tener, Commissioners Hartnett and Parcells voted for this decision. Commissioner Forst voted against this decision. Commissioners Hipp and Hurwitz were disqualified.

DATED: Trenton, New Jersey  
September 8, 1977

ISSUED: September 9, 1977