

P.E.R.C. NO. 97-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD TAPPAN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-98

OLD TAPPAN TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Old Tappan Board of Education for a restraint of binding arbitration of a grievance filed by the Old Tappan Teachers Association. The grievance asserts that the Board improperly reduced the teacher's salary. The Commission finds that compensation is mandatorily negotiable, and a public employer cannot unilaterally set or change salaries. The Commission also finds that the filing of a petition before the Commissioner of Education does not foreclose arbitration of a related grievance by the majority representative.

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, Rand, Algeier, Tosti & Woodruff,
attorneys (Russell J. Schumacher, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen,
attorneys (Nancy I. Oxfeld, of counsel)

DECISION

On February 27, 1996, the Old Tappan Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by a teacher represented by the Old Tappan Teachers Association. The grievance asserts that the Board improperly reduced the teacher's salary.

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

The Association represents teachers and nurses employed by the Board. The parties' contractual grievance procedure ends in binding arbitration.

Carol J. DeLyon is a tenured teacher. DeLyon received a salary of \$53,464 during the 1994-95 school year. By letter dated September 1, 1995, the Board advised DeLyon that it had overpaid her by \$1,494 and sought reimbursement. According to the Board, DeLyon's salary was mistakenly based upon the maximum step of the BA+15 credits salary guide and should have been based upon the maximum step of the BA salary guide. The Board also advised DeLyon that her salary for the 1995-96 school year would be \$51,970.

By letter dated September 20, 1995, the Board requested DeLyon to reimburse it in the amount of \$1,494 either immediately or through a series of payroll deductions beginning in October and ending on December 1, 1996.

On or about October 9, 1995, DeLyon grieved the request for reimbursement and salary adjustments. She also filed a petition with the Commissioner of Education alleging that the salary reduction and reimbursement are prohibited by tenure laws. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the

Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

The Board asserts that DeLyon should be barred from seeking relief through the arbitration process since she has filed a petition with the Commissioner of Education. The Board also asserts that arbitration over the disputed issues is preempted since DeLyon has alleged that the Board's actions violated teacher tenure statutes.

The invocation of the jurisdiction of the Commissioner of Education by an individual does not foreclose the arbitration of a related grievance by the majority representative. Id. Relief can be sought through both forums. See West Windsor Tp. v. PERC, 78 N.J. 98, 116 (1978) (statutes incorporated by reference as terms of any collective agreement and disputes concerning their interpretation, application or claimed violation subject to negotiated grievance procedure) Cf. Fair Lawn Bd. of Ed., P.E.R.C. No. 79-88, 5 NJPER 225 (¶10124 1979), aff'd 174 N.J. Super. 554, 559 (App. Div. 1980).

Compensation is mandatorily negotiable, and a public employer cannot unilaterally set or change salaries. N.J.S.A. 34:13A-5.3; Englewood Bd. of Ed. v. Englewood Teachers Ass'n., 64 N.J. 1 (1973); Camden Cty., P.E.R.C. No. 94-121, 20 NJPER 282


(¶25143 1994). The grievance alleges an improper diminution of salary and is therefore legally arbitrable. We decline to restrain arbitration over whether the Board could recoup \$1,494 from DeLyon's 1994-95 salary and reduce DeLyon's salary for the 1995-96 school year.

We appreciate the Board's concerns about the possibility of inconsistent results. Issues of res judicata, collateral estoppel and deferral can be raised in either or both forums.

ORDER

The request of the Old Tappan Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Buchanan abstained from consideration.

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996