

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CATHERINE HOLCOMBE, GLADYS HILL,
CAROLINE BOCK, BERNICE SHORT,
CAROLYN EDWARDS, ROSANN DUGAS,
ENIS A. HAYES, LOUISE M. HARRIS,
FLORENCE B. SKARBNIK, VALERIE
WEEMS and IONE POWELL,

Petitioners,

-and-

EAST ORANGE BOARD OF EDUCATION,

Docket No. SN-82-3

Respondent,

-and-

EAST ORANGE EDUCATION ASSOCIATION,

Intervenor.

SYNOPSIS

In a scope of negotiations proceeding initiated by 11 nurses employed by the East Orange Board of Education, the Commission finds that a salary differential paid to classroom teachers is not inconsistent with the terms of N.J.S.A. 18A:29-4.2 which requires that nurses be paid in accordance with the teachers' salary guide. Accordingly, the Commission finds that the clause concerns a mandatory subject of negotiations. The case is now transferred to the Office of Administrative Law, which had directed the parties to apply to this Commission for a scope of negotiations determination.

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Appearances:

For the Petitioners, Jack A. Skarbnik, Esq.

For the Respondent, Love and Randall, Esqs.

(Melvin Randall, of Counsel)

For the Intervenor, Rothbard, Harris & Oxfeld, Esqs.

(Sanford R. Oxfeld, of Counsel)

DECISION

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on July 24, 1981 on behalf of 11 nurses employed by the East Orange Board of Education and represented by the East Orange Education Association. This matter comes before the Commission pursuant to a consent order executed by the Honorable Robert P. Glickman, Administrative Law Judge in a matter pending before the Office of Administrative Law involving the nurses and the Board of Education. (OAL Docket

No. EDU-0260-81). The matter before the Office of Administrative Law has been placed on an inactive status pending our resolution of the scope of negotiations issue raised by the instant petition.^{1/}

At issue in this case is an alleged conflict between N.J.S.A. 18A:29-4.2, and Article 26(E) of the 1980-1983 collectively negotiated agreement between the Board and the Association. The relevant statute provides:

Any teaching staff member employed as a school nurse and holding a standard school nurse certificate shall be paid according to the provisions of the teachers' salary guide in effect in that school district, including the full use of the same experience steps and training levels that apply to teachers.

The contractual provision in dispute appears following the negotiated salary schedule and provides:

Recognizing the special and growing demands put upon the classroom teachers, the Board and the Association agree to an additional stipend of .0066.

It is the position of the Petitioners that the salary differential accorded classroom teachers is inconsistent with the dictates of the above-referenced statute, and hence is non-negotiable.

^{1/} Although our Rules indicate that only a public employer or the majority representative of employees has standing to file a scope of negotiations petition, see N.J.A.C. 19:13-2.1, we have entertained the instant petition in order to resolve questions within our area of administrative expertise, which have been raised in the course of a case or controversy before a sister agency, i.e., the Department of Education, and pursuant to the order executed by an administrative law judge for that Department.

In disputing the Petitioner's contentions in the instant case, both the Board and the Association point out that while all persons who are considered "teaching staff members" pursuant to the Education Laws (N.J.S.A. 18A:1-1), are to receive their base salaries pursuant to a negotiated salary guide, it is not uncommon for parties to negotiate additional compensation for various professional employees who perform in specified functional capacities. Included in this category would be department heads, teachers supervising or coaching extracurricular activities, etc. Respondent and Intervenor also point out the difference between "teaching staff member" and "classroom teacher," the former being a more inclusive term than the latter. In this respect they argue that the contractual provision in dispute does not discriminate against school nurses as many other types of professional employees do not fit the definition of classroom teachers, e.g., librarian.

Before determining whether or not the provision in dispute is negotiable, we note that the parties have discussed in their submissions the question of our jurisdiction to determine this issue. The Board correctly points out that the Supreme Court in Bernards Twp. Bd. of Ed. v. Bernards Twp. Ed. Ass'n, 79 N.J. 311 (1979), held that PERC in the course of determining whether or not a negotiations proposal or provision of a collectively negotiated agreement is in conflict with any statutory mandate, may interpret statutes other than the New Jersey Employer-Employee Relations Act, in order to fulfill its jurisdictional responsibilities.

Accordingly, we do possess the jurisdiction to determine whether or not the contractual provision in dispute is at odds with the dictates of N.J.S.A. 18A:29-4.2. Moreover, our jurisdiction in the instant case arises as a result of the Petitioners' filing of the instant case with us pursuant to a consent order executed by an Administrative Law Judge. Therefore, the parties have voluntarily acceded to our jurisdiction to construe the relevant statute to the extent necessary to determine the negotiability issues involved.

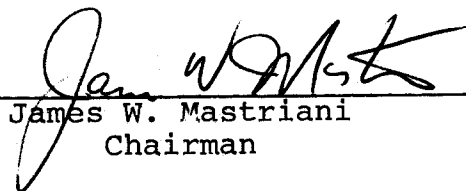
As a general proposition, the dispute concerns the matter of compensation, which all parties readily recognize is ordinarily mandatorily negotiable. In determining whether the relevant statute renders illegal the form of additional compensation paid to classroom teachers pursuant to the contract article quoted above, the Commission in this case, and in all other instances where it must interpret statutes found in the education law, looks for guidance to decisions of the Commissioner and State Board of Education which have interpreted the apposite statute. In their brief, Petitioners have cited a number of cases decided by the Commissioner of Education since N.J.S.A. 18A:29-4.2 was enacted. However, almost all of these determinations involved fact situations where nurses were being paid a salary which was not in accord with the years of experience and level of education, reflected on the salary guides

adopted by the various boards of education in those matters. We have not been cited to, nor have we discovered through our own research, any case which mimics the fact pattern presented herein. Accordingly, since the parties have looked to this Commission rather than the Commissioner of Education to apply the statute to the instant set of facts, we must render a determination of first impression under the Education Laws.

Unlike the previous cases decided by the Commissioner of Education, see e.g., Lenahan v. Board of Education of Lakeland Regional High School District, 1972 S.L.D. 577, there is no allegation in the instant case that these nurses are being compensated at a level below that which appears on the incremental and level of experience salary guides listed at pages 54 through 56 of the agreement. Rather, in our view, this case concerns additional compensation for "classroom teachers" for what the Board and the Association in their agreement evidently believed were increased duties and responsibilities associated with the specific position of classroom teacher. As both the Board and the Association point out, the term classroom teacher, as used by the parties in their agreement, excludes classes of professional employees other than school nurses. Since the statute in question is specifically addressed to school nurses, and it is not in dispute that nurses are included in the salary guide applicable to all professional employees in the unit, we do not believe the contract provision which provides a stipend for certain professionals, i.e. classroom teachers, to be violative of the statute.

Therefore, we find that Article 26(E) relates to a mandatorily negotiable term and condition of employment which is not inconsistent with any applicable statutes. See, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978).^{2/}

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett and Parcels voted in favor of this decision. Commissioner Suskin voted against the decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: November 10, 1981
Trenton, New Jersey
ISSUED: November 12, 1981

^{2/} Since the matter remains pending before the Department of Education, the Commission will not issue any Order with respect to this determination and shall notify the Office of Administrative Law and the Department of Education of the determination rendered herein.