

P.E.R.C. NO. 93-60

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW PROVIDENCE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-7

NEW PROVIDENCE ASSOCIATION  
OF ADMINISTRATIVE PERSONNEL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable a contract provision that the New Providence Association of Administrative Personnel seeks to include in a successor collective negotiations agreement with the New Providence Board of Education. The provision requires that employees transferred to non-unit positions retain their unit salaries. The Commission finds that this provision violates the exclusivity doctrine. The Commission declines to issue injunctive relief because the record does not contain a demand for arbitration and the grievance procedure does not end in binding arbitration.

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Appearances:

For the Petitioner, Martin R. Pachman, P.C., attorneys,  
(Martin R. Pachman, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys  
(Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On July 24, 1992, the New Providence Board of Education petitioned for a scope of negotiations determination. The Board seeks a declaration that a contract clause is not mandatorily negotiable and a restraint of arbitration of a grievance filed under that clause by an employee represented by the New Providence Association of Administrative Personnel. The grievance asserts that the Board violated the parties' collective negotiations agreement when it reduced the compensation of a supervisor who was bumped into a teaching position.

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

The Association represents vice-principals and supervisors. The parties entered into a collective negotiations agreement effective from July 1, 1989 until June 30, 1992. Article V is entitled Salary. Section I provides:

In cases of reduction in force, the Board agrees to maintain the salary of any administrator appointed to a lower-paying position at its current level during the duration of this contract.

The parties have engaged in successor contract negotiations. The Association has proposed that Section I of Article V be retained in any successor contract. The Board has responded that this section is not mandatorily negotiable.

Michele DeMaio was a supervisor during the 1991-1992 school year. When the Board eliminated the non-unit position of Director of Special Services, the employee who had held that position bumped into DeMaio's position. She in turn was bumped into the non-unit position of classroom teacher for the 1992-1993 school year. She was to be paid the salary of a classroom teacher for that year.

On June 26, 1992, DeMaio filed a grievance. She asserts that paying her the salary of a classroom teacher violated Article V, Section I and that her previous salary should be restored. The Board denied this grievance. The record does not contain a demand for arbitration. The contract's grievance procedure ends in advisory arbitration.

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 the grievance or any contractual defenses the Board may have.

The Board has a statutory right and managerial prerogative to abolish positions and reduce its work force pursuant to N.J.S.A. 18A:28-9. See Old Bridge Tp. Bd. of Ed. v. Old Bridge Tp. Ed Ass'n, 98 N.J. 523 (1985); In re Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979); Morris Cty. College, P.E.R.C. No. 93-25, 18 NJPER 478 (¶23217 1992). A collective negotiations agreement cannot require that employees transferred to non-unit positions retain their unit salaries -- that would violate the exclusivity doctrine. Old Bridge at 533; Wayne Tp. Bd. of Ed., P.E.R.C. No. 80-83, 6 NJPER 30 (¶11015 1980); Trenton Bd. of Ed., P.E.R.C. No. 83-37, 8 NJPER 574 (¶13265 1982), recon. den. P.E.R.C. No. 83-62, 9 NJPER 15 (¶14006 1982), aff'd App. Div. Dkt. No. A-1606-82T3 (3/16/84). Contrast Camden Bd. of Ed., P.E.R.C. No. 88-18, 13 NJPER 718 (¶18268 1987) (employee transferred from one unit position to another may seek to enforce alleged red-circle agreement by which parties allegedly agreed to modify

contractual rates of compensation for unit positions). We therefore hold that Section I of Article V is not mandatorily negotiable.

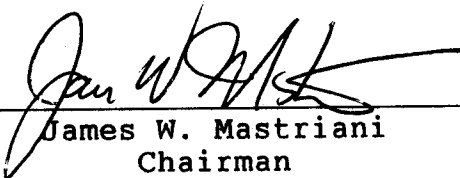
We decline to issue any injunctive relief. The record does not contain a demand for arbitration and the grievance procedure does not end in binding arbitration.

ORDER

Article V, Section I is not mandatorily negotiable.

The request of the New Providence Board of Education for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: January 28, 1993  
Trenton, New Jersey  
ISSUED: January 29, 1993