

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket No. SN-77-3

PISCATAWAY TOWNSHIP PRINCIPALS  
ASSOCIATION,

Respondent.

SYNOPSIS

In a decision and order on motion, the Commission denies the Board's motion for reconsideration of the Commission's earlier decision and order in a scope of negotiations proceeding. The Commission in that earlier scope proceeding had determined that a matter in dispute between the Board and the Principals Association, relating to a reduction in the work year of elementary school vice-principals, was a required subject for collective negotiations. The Board had urged that its motion be granted because of alleged extraordinary circumstances. The Commission rules that the Board failed to meet its burden set forth in the Commission's Rules concerning a motion for reconsideration, i.e. that there be extraordinary circumstances; that recent Appellate Division cases cited by the Board in support of its motion were clearly distinguishable from the case at bar and did not involve a decision to reduce the work year of public employees; that the order of a Chancery Division judge concerning an arbitration request in a similar matter involving another employee organization was not relevant to the instant matter; and that the Board's argument that the Commission's order in its scope decision should be prospective only was misplaced, inasmuch as this argument would be more appropriately raised in the related unfair practice proceeding pending before the Commission, since the Commission in scope proceedings merely addresses the abstract issue of negotiability placed before it.

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Appearances:

For the Petitioner, Rubin and Lerner, Esqs.  
(Mr. Frank J. Rubin, of Counsel)

For the Respondent, Harper and O'Brien, Esqs.  
(Mr. John J. Harper, of Counsel)

DECISION AND ORDER ON MOTION

On January 27, 1977, the Public Employment Relations Commission (hereinafter the "Commission") issued its Decision and Order in the above-captioned Scope of Negotiations proceeding. In re Piscataway Township Board of Education, P.E.R.C. No. 77-37, 3 NJPER \_\_\_ (1977). In that decision, the Commission, after carefully considering the entire record, determined that the matter in dispute between the Piscataway Township Board of Education (hereinafter the "Board") and the Piscataway Township Principals Association (hereinafter the "Association"), relating to the reduction in the work year of elementary school vice-principals, was a required subject for collective negotiations. The Commission in this case reversed its earlier determination concerning a similar matter in dispute in a decision entitled In re Fair Lawn

Board of Education, P.E.R.C. No. 76-7, 1 NJPER 47 (1975).

The Commission noted that its determination on the negotiability of the Board's decision to reduce the length of the work year of elementary school vice-principals employed by the Board from twelve (12) months to ten (10) months was fully consistent with a number of previous Commission and judicial decisions. The Commission affirmed that an employee's work year is as much a term and condition of employment as is his compensation and that a public employer was required to negotiate with an exclusive majority representative with regard to an alteration in an employee's work year just as it was required to negotiate with that representative with regard to proposed changes in an individual's compensation

On February 12, 1977, the Board filed with the Commission a Motion for Reconsideration, pursuant to N.J.A.C. 19:15-4.1, along with a supporting memorandum and exhibits.<sup>1/</sup> Additionally, in a letter dated February 28, 1977, the Board requested oral argument before the Commission and enclosed an additional exhibit for the Commission's consideration. On February 28, 1977, the Association filed a memorandum of law in opposition to the Petitioner's Motion for Reconsideration. The Association, in a letter dated March 2, 1977, requested that the Board's request for oral argument be denied.

<sup>1/</sup> The Board had requested and was granted an extension of time in which to file its motion.

The Board, in its memorandum in support of its motion, submitted in part that two recent Appellate Division decisions, Union County Regional High School Board of Education v. Union County Regional High School Teachers Association, 145 N.J. Super. 435 (App. Div. 1976), certif denied, \_\_\_ N.J. \_\_\_ (Docket Nos. C-522 and C-523, March 1, 1977) and Englewood Teachers Association v. Englewood Board of Education, App. Div. Docket No. A-1473-75 (December 10, 1976), that had not been decided at the time that the Board had made its earlier submissions to the Commission with reference to the instant scope matter had significant impact on the Commission's scope determination. More specifically, the Board asserted that the present case corresponds functionally with a reduction in force (hereinafter "RIF") under N.J.S.A. 18A:28-9, although in the instant matter no administrative positions were actually abolished. The Board contended that the Union County/Cranford and Englewood cases confirmed that an issue involving a decision to reduce the number of employees and, by implication, a decision to reduce the work year of employees, need not be negotiated inasmuch as these matters dealt with management prerogatives. /The Board argued that in any event the enforcement of the Commission's order in this scope matter should be stayed pending the disposition of the Union County/Cranford case by the New Jersey Supreme Court.7 The Board in addition stated that its motion should be granted so as to consider the relevance of a Chancery Division rendered by the Honorable David D. Furman. The Board contended

that Judge Furman's decision in a related arbitration matter involving individuals represented by the Piscataway Township Education Association was in conflict with the Commission's determination in the scope matter before it. The Board in a third point submitted that the Commission's decision in the instant matter should be given prospective application only in light of the fact that the Board had acted in conformity with the Commission's mandate in the Fair Lawn decision, supra, which had found that a reduction in the work year of elementary school principals was not a required subject of collective negotiations. The Board stated that there was no compelling interest that required the Commission to frustrate the Board's reasonable expectation of legality and that fairness required a prospective application of the Commission's decision and order in this case.

The Association opposes this motion on the following grounds: (1) the Petitioner failed to meet the burden set forth in the Commission's Rules concerning a motion for Commission reconsideration, i.e., that there be extraordinary circumstances, and should be denied relief; (2) the Union County/Cranford and Englewood cases cited by the Board were clearly distinguishable from the case at bar and did not in any way involve a decision to reduce the work year of public employees; (3) the intention of a Chancery Division judge concerning an arbitration request in a similar matter involving another employee organization was extraneous and not relevant to the instant matter; (4) judicial

precedent clearly established that the Commission's decision herein should not be applied prospectively; and (5) no reasons had been advanced to stay the enforcement of the Commission's decision pending disposition of the Union County/Cranford case by the New Jersey Supreme Court -- a case that did not deal with the unilateral decision of a public employer to alter the work year of certain of its employees.

After careful consideration of the parties' submissions with regard to this instant matter, it is the Commission's determination that the Board's Motion for Reconsideration should be denied. It is clear that the Board has not demonstrated any extraordinary circumstances, as required by N.J.A.C. 19:15-4.1, that would entitle the Board to have its motion granted. The Board's request for oral argument is similarly denied.

The Board's first point is that the Commission should reconsider its scope determination in light of the Appellate Division's December 10, 1976 decisions in Union County/Cranford, supra, and Englewood, supra, that were not referred to in the parties' original submissions to the Commission relating to the scope petition, all of which predated those decisions. An examination of the Board's memorandum in support of its motion fails to reveal, however, the significance of these cases and their relevance to the instant matter. The Board primarily restates an argument contained in its original brief in support of its scope petition that the matter at bar corresponds functionally to a RIF under N.J.S.A. 18A:28-9 /i.e., the abolition of a

twelve month position followed by the creation of a ten month position effective upon the expiration of a prior contract<sup>2/</sup>, although no positions were literally abolished.<sup>2/</sup> The Board noted that even the decision of the Executive Director, now the Chairman of the Commission, in Union County/Cranford<sup>3/</sup> recognized that a decision to reduce the number of employees, pursuant to N.J.S.A. 18A:28-9, need not be negotiated. The Board therefore concluded that on this basis alone the Commission should not have found for the Association in the instant scope proceeding.

We conclude that the Board has not advanced any arguments that were not proffered before. We note that we were aware of the aforementioned Appellate Division decisions in Union County/Cranford and Englewood when our scope decision was issued and we did not find that these cases in any way undermined the series of judicial and administrative decisions referred to in our scope decision that have stated that working hours, including the length of employees' work years, were undoubtedly terms and conditions of employment that were mandatorily negotiable.<sup>4/</sup>

<sup>2/</sup> The Board referred to several Commissioner of Education decisions in support of this theory.

<sup>3/</sup> P.E.R.C. No. 76-43, 2 NJPER 221 (1976).

<sup>4/</sup> The Board in addition argued that the enforcement of the Commission's scope decision should at least be stayed pending Supreme Court action on the petitions for certification before it in the Union County/Cranford matter, supra. The Commission need not comment on this particular argument inasmuch as the Supreme Court has denied said certification petitions.

The Commission further determines that the Board's "reduction in force" analogy is misplaced. The logical extension of this argument is that any unilateral reduction in the work hours or work year of employees covered by Title 18A is permissible if the Board merely takes the trouble to categorize its decisions as being tantamount to a partial reduction in force. This assertion of form over substance clearly ignores the import of the aforementioned judicial and administrative decisions. This would seem to permit unilateral reduction in salaries as well if the Board went through the same machinations.

The Board's second point is that the Commission should reconsider its scope determination in light of the apparent decision of the Hon. David D. Furman in a Superior Court, Chancery Division matter /Bd. of Ed. of the Township of Piscataway v. Piscataway Twp. Bd. of Ed., Chancery Division, Docket No. C-427-767, involving the Board's effort to seek the restraint of a related arbitration matter concerning the Piscataway Township Education Association, that only the impact of the Board's decision to reduce the work year of certain individuals represented by the Education Association was subject to arbitration. The Board admitted that Judge Furman's original order had later been modified in light of the Board of Education of the City of Plainfield v. Plainfield Education Association decision, 144 N.J. Super. 521 (App. Div. 1976) to in part remove any specific restraint on the arbitrator's jurisdiction in that



matter.<sup>5/</sup>

The Commission first notes that this Chancery Division matter involved different parties, somewhat different facts, and a different collective negotiations agreement. Furthermore, no effort was made prior to the Commission's January 27, 1977 scope decision to introduce into the formal record before the Commission any mention of this so-called "related" proceeding.

The Commission has, however, examined the proffered submissions with reference to the matter before Judge Furman and fails to find any evidence to establish that the Board's alleged fear of dealing with inconsistent opinions of law on a common set of facts has any basis in fact, relative to the instant scope proceeding. As noted in footnote 9 of the Commission's scope decision,<sup>6/</sup> this scope petition did not originally arise with respect to a matter which the Association sought to have arbitrated pursuant to a negotiated grievance procedure, although the Association later sought to arbitrate the changes effected in the vice-principals work year. The Commission, however, determined that the Association's ability

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<sup>5/</sup> That decision held that, "...if there is a dispute over negotiability of a matter and either side wishes to obtain an official determination of the issue, a request for such determination must be made to PERC in the first instance and not to the courts" at 526.

<sup>6/</sup> P.E.R.C. No. 77-37 at page 9.

to submit the Board's decision to reduce the work year of the vice-principals to arbitration, assuming arguendo that it was otherwise arbitrable under the parties' collective negotiations agreement, was not dependent upon the Commission's decision in this instant matter. The Board's decision would have also been subject to arbitration pursuant to the Commission's prior determination enunciated in Fair Lawn, supra.<sup>7/</sup>

The Board's last point raised in its memorandum in support of its motion is that the Commission's decision should be given prospective application only inasmuch as the retrospective application of a "new standard" relating to the negotiability of a reduction in employees' work years would be "grossly inequitable." The Board submitted that it had relied substantially on the Commission's Fair Lawn decision, supra, and that this detrimental reliance, coupled with the fact that

<sup>7/</sup> See e.g. In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976). In this decision the Commission held in part that if a dispute arises under a grievance/arbitration procedure contained in a contract entered into after the effective date of the amendments to the Act contained in L. 1974, c. 123 (January 20, 1975), the matter may be submitted to arbitration if it involves either a permissive or required subject of negotiations.

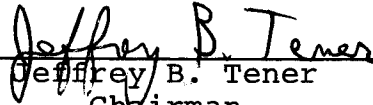
It should also be noted that the Commission has stated that although it may have determined that certain matters were arbitrable, it was not passing upon the propriety of any possible remedy that could be fashioned in an arbitration proceeding, since that decision was properly for the arbitrator's determination. See e.g. In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975), In re Wyckoff Board of Education, P.E.R.C. No. 77-41, 3 NJPER (1977), City of Camden Board of Education v. Camden Education Association (letter opinion), Docket No. C-1681-75, decided August 4, 1976.

there was no vital public interest in extending the "new standard" to the facts herein, mandated that the Commission's decision should be prospective only.

The Commission determines that this argument has no merit. The Commission in the instant scope proceeding, pursuant to N.J.S.A. 34:13A-5.4(f) and N.J.A.C. 19:13-3.7, has simply addressed the abstract issue of negotiability placed before it by the Board, i.e., whether the disputed matter between the Board and the Association is a required, permissive or illegal subject for collective negotiations. It has in no way attempted to adjudicate the relative merits of the related unfair practice proceeding involving the Board and the Association. [Docket No. CO-76-355-22] Inasmuch as the Commission's orders in scope proceedings are generally prospective only, the board's argument concerning the application of this determination is misplaced.<sup>8/</sup>

For all of the above reasons we are not satisfied that the Board's motion for reconsideration should be granted and it is hereby denied in all respects.

BY ORDER OF THE COMMISSION

  
 Jeffrey B. Tener  
 Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.

Commissioner Hurwitz abstained under protest.

Commissioner Hipp was not present

DATED: Trenton, New Jersey

March 16, 1977

ISSUED: March 17, 1977

<sup>8/</sup> The Board's argument in this regard would more appropriately be raised in the related unfair practice proceeding between the parties, if indeed the Commission determines that the Board has committed an unfair practice.