

P.E.R.C. NO. 80-156

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY SPECIAL SERVICES
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

- and -

Docket No. SN-80-142

BURLINGTON COUNTY SPECIAL SERVICES
TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In an interlocutory decision, the Special Assistant to the Chairman denies the request of the Board for a temporary restraint of arbitration. The issue in dispute concerns the assignment of special teachers to substitute duty when substitute teachers could not be utilized. While that subject is not a mandatory subject of negotiations, the Special Assistant notes that the contract provides only for advisory arbitration. Thus, consistent with Bd. of Ed. of the Twp. of Bernards v. Bernards Twp. Ed Assn, 79 N.J. 311 (1979), the matter can proceed to advisory arbitration if otherwise arbitrable under the parties' agreement.

P.E.R.C. NO. 80-156

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY SPECIAL SERVICES
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-80-142

BURLINGTON COUNTY SPECIAL SERVICES
TEACHERS ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Parker, McCay & Criscuolo, P.C.
(Mr. Stephen J. Mushinski, of Counsel)

For the Respondent, Selikoff & Cohen, P.A.
(Mr. Steven R. Cohen, of Counsel)

INTERLOCUTORY DECISION

This matter being opened to the Public Employment Relations Commission by Stephen J. Mushinski, Esq., and the undersigned designee of the Commission having read the Petition for Scope of Negotiations Determination filed by the Burlington County Special Services School District Board of Education (the "Board") and the exhibits, affidavits and briefs annexed thereto, and having considered the arguments of the parties, it is hereby

ORDERED that the Board of Education's request for an order temporarily restraining and enjoining an advisory arbitration matter relating to the issue of assigning special teachers to substitute duty when substitute teachers could not be utilized be denied.

The undersigned concludes, after careful consideration of the parties submissions as well as the New Jersey Supreme Court's decision in Board of Education of the Township of Bernards v. Bernards Township Education Association, 79 N.J. 311 (1979), that the instant matter can proceed to advisory arbitration. The New Jersey Supreme Court said in the Bernards Township decision, 79 N.J. 311 at 325-327:

Advisory arbitration does not give rise to the adverse consequences that might ensue were binding arbitration deemed permissible....

Not only is advisory arbitration not detrimental to the public interest, its utilization may well bring about beneficial consequences... Finally, we cannot overlook the potential favorable effects that such a procedure will have upon the morale of public employees, inasmuch as they will be permitted to present their cause - even if only as an initial matter - to an individual whom they do not consider aligned in interest with the Board.

Thus, an advisory arbitration clause does not interfere with the exercise of managerial prerogative. Moreover, its inclusion in a collective agreement will directly and intimately affect the work and welfare of the public employee. Consequently, a provision in a negotiated grievance procedure calling for advisory arbitration - even if it encompasses disputes concerning the applicability of managerial prerogatives - is itself a term and condition of employment, as that phrase is defined in our caselaw... Seen in another way, advisory arbitration provides public employees with the opportunity to make known their grievances. N.J. Const. (1947) Art. I, para. 19.

Thus, we hold that the parties may agree to submit to advisory arbitration disputes concerning the applicability to individual employees of matters of governmental policy....

... Since a contractual grievance procedure providing for advisory arbitration is indisputably a term and condition of employment, this agreement is valid and enforceable....

In consideration of the above language, the undersigned concludes that the instant matter can proceed to advisory arbitration.

Lastly, it should be noted as has frequently been indicated by the Commission and affirmed by the New Jersey Supreme Court in Ridgefield Park Board of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978), that scope proceedings relate solely to the negotiability of the subject matter of the parties' dispute. Whether particular subjects are within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract at issue provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other similar question relating to procedural or substantive arbitrability is not to be determined by the Commission in a scope proceeding. These are questions that are appropriate for determination by an arbitrator and/or the Courts. Thus, this determination does not in any way anticipate the outcome of the advisory arbitration.

BY ORDER OF THE COMMISSION



Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
June 20, 1980