

P.E.R.C. NO. 93-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW MILFORD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-65

NEW MILFORD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds an arbitration award to be within the scope of collective negotiations. The award sustained a grievance filed by the New Milford Education Association against the New Milford Board of Education. The grievance asserted that the Board violated the parties' collective negotiations agreement when it appointed a secretary rather than a teacher to the extracurricular position of Athletic Fund Treasurer. Given the caselaw on unit work and N.J.S.A. 34:13A-23, the Commission holds that the Board may obligate itself to appoint a qualified applicant from within the teachers' unit rather than a "more qualified" applicant from outside that unit.

P.E.R.C. NO. 93-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW MILFORD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-65

NEW MILFORD EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Gerald L. Dorf, P.C., attorneys
(John C. Scannell, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On January 29, 1993, the New Milford Board of Education petitioned for a scope of negotiations determination. The Board sought a restraint of binding arbitration of a grievance filed by the New Milford Education Association. That grievance asserts that the Board violated the parties' collective negotiations agreement when it appointed a secretary rather than a teacher to the extracurricular position of Athletic Fund Treasurer.

The Board also requested an interim restraint against the completion of arbitration proceedings. A Commission designee denied that request and an award issued on March 1, 1993.

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

The Association represents a negotiations unit containing the Board's teachers and excluding the Board's secretaries.^{1/} The parties entered into a collective negotiations agreement effective from July 1, 1989 to June 30, 1991. The grievance procedure ends in binding arbitration. Article X, Section Q of the agreement provides that teacher participation in extracurricular activities shall be voluntary, and that the Board retains the right to assign an individual if no one volunteers. Schedule D is entitled "Extra Pay Salary Provisions." Under High School Positions, it lists Athletic Fund Treasurer and sets the stipends for the 1989-90 and 1990-91 school years.

The job description for Athletic Fund Treasurer lists the duties for that position. The treasurer must maintain a set of books for at least 12 separate accounts; prepare and validate all fund disbursements; set up cash boxes and organize ticket sales; submit vouchers to the Board for payment of "per diem" positions; reconcile monthly and quarterly bank statements and submit them to the Assistant Superintendent/Business; submit books and records to the auditor and be available to clarify accounting procedures; comply with Board policy concerning funds; and prepare and submit vouchers to the Board for cumulative per diem payments. The Athletic Fund books are audited each year. N.J.S.A. 18A:19-14; N.J.S.A. 18A:23-2.

^{1/} A separate unit of secretarial/clerical personnel is represented by the New Milford Association of Educational Secretaries.

The position of Athletic Fund Treasurer was created in 1961. A teacher, Donald Rickert, was appointed to hold that position. When Rickert was promoted to a managerial position, another teacher, William Hart, was appointed to be Athletic Fund Treasurer. Hart held that position until his death in March 1991. He also held the position of Student Fund Treasurer.

On March 15, 1991, the high school principal solicited applications for the positions of Athletic Fund Treasurer and Student Fund Treasurer. The posting referred to the attached job description. It did not mention any other duties or qualifications.

Several teachers applied, including Edward Neri, who had maintained expense accounts for a camp for eleven years, and Pam Miller, who had kept the books for her husband's company. A secretary, Ann Skrabonja, also applied. She had been a "full charge bookkeeper" with two companies and had kept books for the Board since 1985.

The principal recommended that Miller be appointed as Student Fund Treasurer and Neri be appointed as Athletic Fund Treasurer. The Assistant Superintendent/Business, however, recommended that Skrabonja be appointed as Athletic Fund Treasurer. The Board accepted that recommendation as well as the recommendation to appoint Miller as Student Fund Treasurer. Skrabonja was reappointed for the 1991-92 and 1992-93 school years.

The Association filed a grievance contesting the appointment of a secretary rather than a teacher to be Athletic Fund

Treasurer. It requested that the Board appoint one of the two high school teachers who had applied. The Board denied the grievance, stating in part that it had the "right to appoint the best qualified individual to any position including an extra pay position."

The Association demanded binding arbitration. The arbitrator ruled in its favor. He found that the Board had obligated itself to appoint a teacher as Athletic Fund Treasurer if a qualified teacher applied. He noted that the job description did not require a bookkeeping background and that in any event Miller had bookkeeping experience and Neri had kept expense accounts. The arbitrator ordered the Board to examine the qualifications of the two teachers who had applied for Athletic Fund Treasurer for the 1992-93 school year and to appoint one of them if qualified.^{2/} He also ordered the Board to post the position for the 1993-94 school year and to select a qualified teacher if one applied.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1988), 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

^{2/} In recommending that Skrabonja be reappointed for the 1992-93 school year, the Assistant Superintendent/Business found that she was the "most qualified" applicant, but he did not say the other applicants were not qualified.

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 arbitration award.

Before 1990, extracurricular appointments and retentions were not mandatorily negotiable or legally arbitrable. Teaneck Teacher Ass'n v. Teaneck Bd. of Ed., 94 N.J. 9 (1983); Mainland Reg. Teachers Ass'n v. Mainland Reg. School Dist. Bd. of Ed., 78 N.J. Super. 476 (App. Div. 1980), certif. den. 87 N.J. 312 (1981). But in 1990, the Legislature amended N.J.S.A. 34:13A-1 et seq. to overrule that case law. N.J.S.A. 34:13A-23 now states:

All aspects of assignment to, retention in, dismissal from, and any terms and conditions of employment concerning extracurricular activities shall be deemed mandatory subjects for collective negotiations between an employer and the majority representative of the employees in a collective bargaining unit, except that the establishment of qualifications for such positions shall not constitute a mandatory subject for negotiations. If the negotiated selection procedures fail to produce a qualified candidate from within the district the employer may employ from outside the district any qualified person who holds an appropriate New Jersey teaching certificate. If the employer is unable to employ a qualified person from outside of the district, the employer may assign a qualified teaching staff member from within the district.


The Association asserts that Athletic Fund Treasurer is a negotiations unit position covered by the teachers' contract and that the preservation of unit work is a mandatorily negotiable subject. We agree. See, e.g., City of Newark, P.E.R.C. No. 88-105,

14 NJPER 334 (¶19125 1988); Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83). The Board asserts that the establishment of the qualifications for the position of Athletic Fund Treasurer is not a mandatory subject of negotiations and that it established the qualification of bookkeeping experience. However, neither the job description nor posting stated that bookkeeping experience is a prerequisite for the job and in any event teachers with bookkeeping experience did apply. Given the unit work cases and N.J.S.A. 34:13A-23, the Board may obligate itself to appoint a qualified applicant from within the teachers' negotiations unit rather than a "more qualified" applicant from outside that unit to the position of Athletic Fund Treasurer. Whether or not an applicant possesses the necessary qualifications is a mandatorily negotiable and legally arbitrable subject. Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993).

ORDER

The arbitration award is within the scope of collective negotiations.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: May 20, 1993
Trenton, New Jersey
ISSUED: May 21, 1993