

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
CITY OF TRENTON,
Petitioner,

Docket No. SN-76-27

-and-

TRENTON ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,
Respondent.

SYNOPSIS

In a scope of negotiations proceeding a board of education seeks a determination of the negotiability and arbitrability of a matter in dispute concerning the involuntary transfer of an administrative assistant employed by the board from one school to the same position at a different school. The Commission holds that the involuntary transfer of an employee is a permissive, not a mandatory, subject of negotiations. The Commission also determines, relying upon the standard established in a recent decision of the Appellate Division of the Superior Court, that the agreement herein, having been ratified on January 23, 1975, was entered into after the effective date of Chapter 123 of the Public Laws of 1974 and the amendments of that legislation do apply to this agreement and this dispute. Therefore, the matter could be submitted to arbitration and the Commission dismissed the Board of Education's continuing request for a permanent restraint of arbitration.

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Appearances:

For the Petitioner, Merlino and Andrew, Esqs.
(Mr. Robert B. Rottkamp, of Counsel)

For the Respondent, Ruhlman and Butrym, Esqs.
(Mr. Paul T. Koenig, Jr., of Counsel)

DECISION AND ORDER

On December 8, 1975 the Board of Education of the City of Trenton (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the Board and the Trenton Administrators and Supervisors Association (the "Association") was within the scope of collective negotiations.^{1/}

1/ The Commission's authority to render such determinations is set forth in N.J.S.A. 34:13A-5.4(d), which states: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

The dispute initially arose as a grievance filed by an administrative assistant employed by the Board contesting his transfer from one school to the same administrative position at another school in the district. The transfer occurred on April 15, 1975 and the grievance was filed on May 28, 1975.^{2/} The grievance was processed through the grievance/arbitration procedure contained within the parties' collective negotiations agreement. The grievance was denied by the Board at each step of the procedure and the Association, on behalf of the administrator, sought to invoke the final step, binding arbitration. The Board was advised by a Notice of Hearing dated December 2, 1975 from the American Arbitration Association that the arbitration hearing had been scheduled for December 18, 1975.^{3/}

Upon receipt of this Notice, the Board filed the

2/ The administrator apparently complied with the transfer and has performed the duties assigned him.

The Association alleges a violation of Article X, paragraph A of the parties' agreement which reads:

"A. Involuntary Transfer

Administrators shall be required to accept a transfer (any dispute arising may be subject to the Grievance Procedure, Article III of this Agreement)."

3/ As can be seen from this brief recitation, the facts relevant to the issue before the Commission are not complex, nor do they appear to be in dispute to any material degree.

At one point in its brief the Association mentions that the grievant maintains that his transfer was for disciplinary reasons, but the Association never expands upon this point or offers any evidence to support this statement. As stated, the grievance was filed pursuant to Article X, paragraph A of the contract entitled "Involuntary Transfer." Therefore it would appear that the motivation for the transfer is an issue for the arbitrator and has not been pursued before this Commission.

Neither party requested an evidentiary hearing or oral argument before the Commission, N.J.A.C. 19:13-3.4 and 19:13-3.6, so the only issue before us is the legal one concerning the negotiability and arbitrability of involuntary transfers.

within Petition and also requested that the arbitration, including the December 18, 1975 hearing, be restrained during the pendency of the scope proceeding. The Executive Director,^{4/} acting on behalf of the Commission, issued an Interlocutory Decision dated December 15, 1975 denying the requested stay of arbitration. In re Board of Education of the City of Trenton, E.D. No. 76-11, 2 NJPER _____ (1975). He believed that the matter in dispute would be found to be either a permissive or a mandatory subject of negotiations and therefore could be submitted to arbitration if otherwise arbitrable under the parties' agreement. The Board, of course, disagrees and still maintains that the matter is outside the scope of collective negotiations and is,^{5/} therefore, non-arbitrable.

Prior to the passage of Chapter 123 of the Public Laws of 1974, arbitration of disputes between boards of education and their employees which arose pursuant to contracts negotiated under this Act was limited to matters which directly affected the financial and personal welfare of the employees and did not

^{4/} Now Chairman of the Commission, Jeffrey B. Tener.

^{5/} According to the brief submitted by the Association, the Board initially sought to have the arbitration of this matter enjoined by the Superior Court of New Jersey, Chancery Division. The application was denied. It also indicates that following the issuance of the Executive Director's decision the Board again sought to enjoin the arbitration by applying to the Superior Court, Law Division. This application was also denied and the arbitration hearing was held on December 18, 1975.

Despite the fact that the hearing has been held, both parties still desire a final Commission decision on the scope issue. Since the Executive Director's decision is not a final decision of this Commission on the merits, there still exists a "matter in dispute". Neither party has advised the Commission of the results, if they have been received, of the arbitration and we have no indication that the matter has been rendered moot.

involve predominantly educational policy decisions. This limitation was enunciated in three decisions of the New Jersey Supreme Court generally referred to as the "Dunellen trilogy".^{6/} These cases interpreted Chapter 303 of the Public Laws of 1968, and had the effect, particularly the Dunellen case itself, of restricting the arbitration of disputes under Chapter 303 contracts to matters which the courts would find to be mandatorily negotiable terms and conditions of employment. The courts did generally include within this latter category of arbitrable subjects disputes arising from alleged alterations of terms and conditions of employment caused by the implementation of non-arbitrable managerial decisions,^{7/} but they refused to allow arbitration of those matters which this Commission has frequently categorized as permissive subjects of negotiation.

Chapter 123 was approved on October 21, 1974 to take effect ninety days after enactment,^{8/} and was passed as a reaction to some of the matters raised in the Dunellen trilogy. This

^{6/} Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); The Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973); Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973).

^{7/} See for example Englewood Teachers Association v. Englewood Board of Education, supra; Red Bank Board of Education v. Warrington, 138 N.J. Super 564 (App. Div. 1976); Board of Education of West Orange v. West Orange Education Association, 128 N.J. Super 281 (Chan. Div. 1974). See also In re Piscataway Township Board of Education, P.E.R.C. No. 77-20, 2 NJPER (1976); In re Board of Education of the Borough of Tenafly; P.E.R.C. No. 76-24, 2 NJPER 75 (1976).

^{8/} The nintieth day was Sunday, January 19, 1975 so the effective date of the amendments is generally accepted as January 20, 1975.

Commission has recently passed upon the effect these amendments to the Act had on the limited scope of arbitration which emanated from the Dunellen decision. In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 2 NJPER _____ (1976). In that case we expressed our belief that one of the purposes of Chapter 123 was to expand the potential jurisdiction of a grievance/arbitration process contained in a collective negotiations agreement to encompass all those matters which the parties could legally incorporate into such a document. This would include both mandatory and permissive subjects of collective negotiations.

In determining whether Chapter 303 or Chapter 123 governs a particular agreement, this Commission has applied the standard enunciated in a recent decision of the Appellate Division of the Superior Court. In Board of Education of the Township of Ocean v. Township of Ocean Teachers Association,^{9/} the Court held that the Chapter 123 amendments do not apply to contracts entered into prior to the effective date of Chapter 123. The contract under which this grievance was filed covers the period from July 1, 1974 to June 30, 1976. However, negotiations concerning it were not completed until December 1974 or January 1975 and it was not formally ratified by the

^{9/} Docket No. A-3334-74 (decided May 4, 1975) as yet unreported.

parties until January 23, 1975. We therefore find that it was not entered into until after the effective date of Chapter 123.

The Ocean Township decision, supra, is relevant to this dispute on the merits as well as on the question of what statute is applicable. The facts of that case dealt with the involuntary transfers of two teachers from one school in the district to another. The Court held that the decisions to transfer these teachers were major educational policy judgments and not mandatorily negotiable terms and conditions of employment.^{10/} However, since we see nothing in the statutes which would make it illegal for a board to voluntarily enter into negotiations on this subject, we find that the involuntary transfer of employees is a permissive subject for collective negotiations.^{11/}

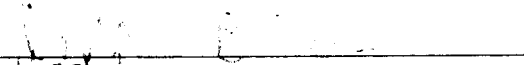
^{10/} As has been noted previously, see footnote 2, the parties' agreement herein contains a clause specifically entitled "Involuntary Transfers" and makes such transfers subject to the grievance procedure. Even if we had determined that this contract was governed by Chapter 303, we would have still held that at least the impact or effect of the transfer on the terms and conditions of employment of the administrator in question could have been submitted to arbitration. See the discussion, supra at pg. 4, and the cases cited in footnote 7.

^{11/} The Board in its brief argues persuasively that involuntary transfer of an administrator is an educational and managerial decision and cites numerous cases which it alleges support the position that the Board cannot be required to negotiate on such a matter. However, none of these cases states that it would be illegal for a board of education to voluntarily negotiate a clause dealing with those transfers, and since it cannot be contested that such transfers do affect the employees involved we believe that the means for arriving at such decisions can be negotiated as a permissive matter.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the matter in dispute, the involuntary transfer of a school administrator by the Board of Education of the City of Trenton, is a permissive subject of collective negotiations and is arbitrable if otherwise arbitrable under the parties' agreement, such agreement having been entered into after the effective date of Chapter 123 of the Public Laws of 1974. The Board of Education's continuing request for a permanent restraint of arbitration is hereby dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Commissioners Hipp and Hurwitz did not participate in this decision. Chairman Tener, Commissioners Forst and Hartnett voted for this decision.

Commissioner Parcels voted against this decision.

DATED: Trenton, New Jersey
November 23, 1976
ISSUED: November 24, 1976