

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF TRUSTEES OF MIDDLESEX
COUNTY COLLEGE,
Petitioner,

-and-

Docket No. SN-77-43

LOCAL 1940, AMERICAN FEDERATION OF
TEACHERS, (AFL-CIO),
Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the College, the Commission concluded that a contractual provision relating to reemployment rights of a retrenched nontenured teacher was an illegal subject of collective negotiations and therefore void. This conclusion was dictated by several Appellate Division decisions including Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Assoc., Inc., 145 N.J. Super. 435 (App. Div. 1976); certif. den. 74 N.J. 248 (1977) and Englewood Board of Education v. Englewood Teachers Association, 150 N.J. Super. 265 (App. Div. 1977); certif. den. _____ N.J. _____ (1977). Therefore, the Commission granted the request of the College that arbitration proceedings be permanently restrained.

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Appearances:

For the College, Wilentz, Goldman & Spitzer, Esqs.
(Mr. Gordon J. Golum, On the Brief)

For the AFT, William D. Hackett, Jr., P.A.

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-77-43, was filed with the Public Employment Relations Commission (the "Commission") on June 16, 1977, by the Board of Trustees of Middlesex County College (the "College") seeking a determination as to whether a certain disputed matter which Local 1940, American Federation of Teachers, AFL-CIO (the "AFT") sought to submit to arbitration was within the scope of collective negotiations. The instant Petition also requested that the Commission grant interim relief in the form of an order restraining arbitration proceedings concerning the issue in dispute. In correspondence dated June 21, 1977 the AFT voluntarily agreed to a temporary stay of the relevant arbitration decision pending the Commission's determination of the within disputed issue although the arbitration hearing has been conducted. The parties submitted briefs relating

to their respective legal contentions, all of which were received by July 20, 1977.

The factual context in which the instant dispute arose is not complicated and is undisputed by the parties. Maria D'Agostino, a nontenured teacher, had been hired to teach full time for the Fall 1976 Semester as an instructor of Spanish and Italian in the Modern Languages Department of the College. She had been issued at that time a one-semester contract. She had previously been employed on a full time basis pursuant to one semester contracts that had been issued for the Fall 1975 Semester and the Spring 1976 Semester and had been employed on a part time adjunct basis in other semesters. At the time of the filing of the instant scope petition D'Agostino was employed on an adjunct basis for the Spring 1977 term.

In January 1977, D'Agostino was notified that her one semester contract would not be renewed. The AFT filed a grievance pursuant to the 1976-1977 agreement between the parties. The AFT claimed in part that the College had violated the contract between the parties and maintained that the College had to renew the employment of D'Agostino. More specifically, the AFT demanded that D'Agostino be reemployed full time for the Spring 1977 Semester as well as the 1977-78 academic year.

The parties were unable to resolve the aforementioned grievance. Pursuant to Article VI F of the parties' agreement, the Commission assigned Joseph Wildebush to arbitrate the grievance. At the first day of the arbitration the parties stipulated that

Maria D'Agostino had a Bachelor of Arts from Douglass College with emphasis in Italian, 30 credits in Italian, had taught on a full time basis for three semesters, and was currently teaching Italian 122 on an adjunct basis in the Spring 1977 Semester. It was further stipulated before the arbitrator that there was insufficient workload in the Department of Modern Languages to justify the granting of an additional one semester contract to D'Agostino for the Spring 1977 Semester and that the College had not manipulated course assignments to eliminate a full load for Ms. D'Agostino. Although the College had argued that D'Agostino was not retrenched or laid off, the arbitrator, in an informal conference, indicated that he believed Ms. D'Agostino was entitled to reemployment rights pursuant to Article IV F(2) of the collective negotiations agreement (Retrenchment and Rights of Reemployment) for a period of one year from the date the retrenchment was announced.^{1/} The parties have further stipulated that the only

^{1/} Article IV F(2) provides that non-tenured negotiating unit members are to be accorded rights granted by N.J.S.A. 18A:60-3 /Reduction of number of positions and reemployment rights for tenured teachers; Higher Education/ as follows:

a. One-semester employees who are retrenched are entitled to no reemployment rights.

b. Employees retrenched at the end of their second (2nd), third (3rd), or fourth (4th) semesters shall be granted reemployment rights pursuant to N.J.S.A. 18A:60-3 for a period of one (1) year from the date the retrenchment is announced.

c. Nontenured employees retrenched at the end of their fifth (5th), sixth (6th), seventh (7th), eighth (8th), ninth (9th), or tenth (10th) semesters shall be granted reemployment rights pursuant to N.J.S.A. 18A:60-3 for a period of two (2) years from the date retrenchment is announced.

issue before the Commission relates to the negotiability of Article IV F(2) granting reemployment rights to nontenured teachers who are retrenched or laid off. The arbitrator indicated to the parties that he would withhold his decision in this matter pending the Commission's determination relating to the negotiability of this particular contractual provision.

The College contends that pursuant to two recent judicial decisions, Union Cty. Reg. H.S. Bd. of Ed. v. Union Cty. Reg. H.S. Teachers Assoc., Inc., 145 N.J. Super. 435 (App. Div. 1976); certif. den. 74 N.J. 248 (1977) and Englewood Board of Education v. Englewood Teachers Association, 150 N. J. Super. 265 (App. Div. 1977); certif. den. ___ N.J. ___ (1977), Article IV F(2), insofar as it grants reemployment rights to retrenched teachers, is null and void inasmuch as it relates to an illegal subject for collective negotiations.

The AFT asserts that the Englewood decision, supra, is distinguishable since the matter at issue in that case related to the Board's substantive decision not to rehire several nontenured teachers and did not relate to the validity of a provision in a collective negotiations agreement granting only reemployment rights to nontenured teachers upon retrenchment. The AFT maintains that the Union County decision, supra, made clear that while no reemployment rights of nontenured teachers existed by force of statute, negotiations and inclusion in a collective negotiations agreement of provisions relating to that subject was indeed proper and

permissible. The AFT thus maintained that the instant matter was arbitrable pursuant to a long line of Commission decisions,^{2/} that have held that if the matters in dispute concerned either permissive or required subjects of negotiations, and the disputes arose from a contract entered into after the effective date of Chapter 123 (January 20, 1975), then they were arbitrable if otherwise arbitrable under the parties' agreement.

After careful consideration of the parties' submissions and apposite judicial decisions, the Commission determines that Article IV F(2) relates to an illegal subject for collective negotiations. In In re Union County/Cranford Board of Education, P.E.R.C. No. 76-43, 2 NJPER 221 (1976), the Commission determined that reemployment rights of rified teachers related to a required subject for collective negotiations. The Commission found that reemployment rights directly affected a teacher's expectation of renewed employment in the event that positions previously eliminated, pursuant to a reduction in force, were reestablished in the future and clearly related to a term and condition of employment. Nothing, not even salary, could be a more fundamental term or condition of employment than is the question of whether one has a job, whether one keeps a job, whether one has any chance for reemployment if a job is lost due to retrenchment, etc.

The Appellate Division, as already noted in Union County, supra, reversed the Commission's determination and stated in part

^{2/} The AFT specifically cited In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976) and In re Ridgefield Park Board of Education, P.E.R.C. No. 77-45, 3 NJPER 150 (1977).

that "under the statutory scheme established by the Legislature for the administration and operation of our public school system, N.J.S.A. 18A:1-1 et seq., nontenured teachers have no right to the renewal of their contracts, the local boards of education, in turn, are invested with virtually unlimited discretion in such matters, and nontenured teachers whose contracts of employment are not renewed by reason of a reduction in force plainly are denied any reemployment rights whatever. N.J.S.A. 18A:28-5, 9, 10, 11 and 12 (citations omitted and emphasis supplied)." Furthermore, the Appellate Division in the Englewood Board of Education decision, supra, relying upon the Union County decision, supra, makes it clear that neither negotiations nor arbitration is authorized regarding reemployment rights for nontenured teachers.

Although the Commission's earlier determination relating to reemployment rights for retrenched non-tenured teachers obviously differed from the judiciary's assessment of the negotiability of this issue, we now are obligated to follow the mandate of the Union County and Englewood decisions. We believe that with reference to those issues addressed by the Appellate Division in these decisions, i.e., the decision to RIF nontenured teachers, the standards to be utilized in selecting nontenured teachers whose contracts were not to be renewed pursuant to a RIF, and the reemployment rights of rified teachers, we must find that these matters relate to illegal subjects for collective negotiations.^{3/}

^{3/} We note the similarities between N.J.S.A. 18A:60-3 relating to reduction in force and reemployment rights and for tenured teachers in higher education and the provisions of N.J.S.A. 18A:28-9 to 12 relating to employees of local boards of

In response to one of the points raised in the AFT's submissions in this matter, we do not find any merit to the AFT's contention that the Appellate Division's parenthetical reference in Union County to the fact that the relevant contracts in effect between the parties did not contain reduction in force provisions constituted an implied recognition that the matters at issue were permissive subjects for collective negotiations, although not required subjects. Any doubts were resolved by the even stronger language in Englewood, supra.

In rendering our decision in this matter we wish to further note that we are addressing the narrow issue that the parties have stipulated is before us: the negotiability of Article IV F(2) in the context of an arbitration matter. As noted previously, this article specifically relates to reemployment rights of a retrenched nontenured teacher. Although the College had argued initially in the relevant arbitration hearing that Ms. D'Agostino was not retrenched or laid off, the issue of the negotiability of reemployment rights for nontenured teachers whose contracts were not renewed for reasons other than pursuant to a RIF, is not presently before the Commission and the Commission therefore does not reach this particular issue.

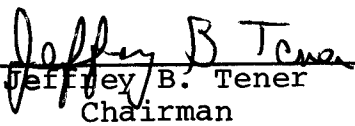
ORDER

For the aforestated reasons, we find the contractual

3/ (Continued) education, as well as the absence of legislation according reemployment rights to nontenured teachers in similar positions. There can be little doubt that the judiciary would construe these statutory provisions similarly.

provision at issue relating to reemployment rights for retrenched nontenured teachers relates to an illegal subject of collective negotiations and is void. The request of the Board of Trustees of Middlesex County College that arbitration proceedings be permanently restrained is granted.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioners Forst and Hipp voted against this decision. Commissioner Hurwitz was not present at the time of the vote.

DATED: Trenton, New Jersey
November 15, 1977
ISSUED: November 17, 1977