

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASCACK VALLEY REGIONAL EDUCATION
ASSOCIATION,

Petitioner,

-and-

Docket No. SN-77-17

PASCACK VALLEY REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Association, the Commission rules on whether a certain matter in dispute between the Association and the Board is within the scope of collective negotiations. The Board sought a determination as to whether the assignment of teachers to extracurricular activities, including athletics, was a required subject for collective negotiations. The Commission concludes that the negotiability dispute between the parties arose under a contract entered into prior to the effective date of Chapter 123 of the Public Laws of 1974, amending the New Jersey Employer-Employee Relations Act, and therefore the substantive law to be applied is governed by Chapter 303, Public Laws of 1968. The Commission further finds, consistent with its earlier decision in In re Rutherford Education Association, PERC No. 77-22, 3 NJPER 37 (1976), that the decision to assign teachers to athletic coaching duties is a managerial policy decision which is not negotiable under Chapter 303. The Commission concludes that procedures surrounding the selection of teachers who will be coaches, but not the qualifications for coaching, would be mandatorily negotiable under Chapter 303 along with the effects, e.g. compensation, of coaching assignments on terms and conditions of employment. The Commission further states, in response to the argument of the Association that there is an ongoing dispute which pervades the post-Chapter 123 collective negotiations agreement presently in effect, that the decision to assign teachers to extracurricular activities would now appear to be a permissive subject of negotiations, while the effect on terms and conditions of employment remains mandatorily negotiable, and that therefore both subjects would be arbitrable if otherwise arbitrable under the parties' agreement.

P.E.R.C. No. 77-55

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Appearances:

For the Petitioner, Goldberg, Simon & Selikoff, Esqs.
(Theodore M. Simon, Jeffrey S. Laden, on the Brief)

For the Respondent, Irving C. Evers, Esq.

DECISION

On January 5, 1977, the Pascack Valley Regional Education Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute between the Association and the Pascack Valley Regional High School District Board of Education (the "Board") are 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." See also, N.J.A.C. 19:13-1.1 et seq. for the Commission's Rules governing these proceedings.

This dispute arose initially in 1975 when coaches in the Board's employ sought additional compensation for coaching duties, under a contract which still had a year to run. Upon refusal of this demand, two of the coaches, Richard Dombal and Donald Doolittle, tendered their resignations from coaching duties. These resignations were not accepted by the Board. A complaint was filed in federal court, alleging involuntary servitude. Said complaint was dismissed and the parties were ordered to proceed to arbitration. An advisory award upheld the coaches' position, but the Board rejected the award. Upon a new complaint in federal court, Judge Herbert J. Stern entered judgment for the Board.

Subsequently, the two coaches and the Association filed suit in New Jersey Superior Court alleging a breach of contract by virtue of the required performance of coaching duties. Judge George B. Gelman, by order of December 23, 1976, granted leave for either party to apply to the Commission for a scope determination, retaining jurisdiction pending that determination. Therefore, the Association filed the instant petition and the Commission hereby renders its determination as to whether the matter in dispute is within the scope of collective negotiations. See Bd. of Ed. of City of Plainfield v. Plainfield Education Assn., 144 N.J. Super. 521 (App. Div. 1976).^{2/}

It is conceded that the original dispute arose under a contract entered into prior to the effective date of Chapter 123 of the

^{2/} Consistent with Judge Gelman's retention of jurisdiction and its past decisions, the Commission will not interpret the parties' contract but will only pass upon the scope of negotiations issues presented. All other matters are left to the Court for its determination.

Public Laws of 1974 amending the New Jersey Employer-Employee Relations Act (the "Act"). Therefore, the substantive law to be applied is governed by Chapter 303, Public Laws of 1975. Petitioner contends that the decision of the New Jersey Supreme Court in Patrolmen's Benevolent Association v. Montclair, 70 N.J. 130 (1976), as well as Plainfield, supra, requires that Chapter 123 be applied retroactively. This argument was considered by the Commission in In re New Milford Bd. of Ed., P.E.R.C. No. 77-29, 3 NJPER 20 (1976). Relying on Bd. of Ed. of Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (App. Div. May 5, 1976), the Commission rejected the notion that Chapter 123 was retroactive substantively, noting that the Montclair and Plainfield decisions dealt only with procedural matters, while Ocean Township specifically addressed and rejected substantive retroactivity.

The question of a board of education's right to assign teachers to extracurricular activities, including athletics, was decided by the Commission in In re Rutherford Education Association, P.E.R.C. No. 77-22, 3 NJPER 37 (1976). There, as here, some teachers involved attempted to resign from their extracurricular appointments, and the Board refused to accept the resignations. Under the Dunellen Trilogy of cases^{3/} which enunciated the law applicable to Chapter 303 contracts, only items directly affecting terms and conditions of employment could be negotiated. The decision to sponsor extracurricular activities and to require teachers to conduct them was held in Rutherford to be an educational policy decision, and therefore not negotiable. However,

^{3/} Dunellen Bd. of Ed. v. Dunellen Ed. Assn., 64 N.J. 17 (1973); Bd. of Ed. of City of Englewood v. Englewood Teachers Assn., 64 N.J. 1 (1973); Burlington County College Faculty Association v. Bd. of Trustees, Burlington County College, 64 N.J. 10 (1973).

the effect, if any, on the terms and conditions of employment of teachers was found to be mandatorily negotiable.

Nothing has been provided to the Commission herein that would warrant a departure from the precedent set in Rutherford, supra. It is our determination that the decision to assign teachers to athletic coaching duties is a managerial policy decision which is not negotiable under Chapter 303. The procedures surrounding selection of teachers who will be coaches, but not the qualifications for coaching, are mandatorily negotiable.^{4/} However, this does not create any right on the part of a teacher assigned as a coach to refuse such assignment. Under Rutherford, the assignment must be accepted and any allegation as to failure to follow negotiated procedures should be grieved under the contractual provisions therefor.^{5/} Also mandatorily negotiable are the effects, e.g. compensation, of coaching assignments on terms and conditions of employment.^{6/}

Although we find that the dispute herein is limited to a Chapter 303 contract, in light of the fact that the Association maintains in its petition that there is an ongoing dispute which "pervades

^{4/} Bd. of Ed. Township of N. Bergen v. N. Bergen Federation of Teachers, 141 N.J. Super. 99, 104 (App. Div. 1976).

^{5/} See In re Glassboro Bd. of Ed., P.E.R.C. No. 77-12, 2 NJPER 355 (1976), in which the Commission stated that "employers can take reasonable action...subject to subsequent impartial scrutiny..." (P.E.R.C. No. 77-12 at p. 11) (emphasis added).

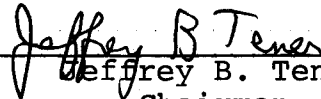
^{6/} The Board concedes that the impact of the assignment must be negotiated at pp. 29-30 of its brief: "There is not and never has been any dispute over the obligation of the Board to negotiate with the teachers over the impact of assignments to extra-curricular activities."

a pre-Chapter 123 collective bargaining agreement as well as a post-Chapter 123 collective bargaining agreement", we believe it appropriate to declare our view of the state of the law under Chapter 123. The decision to assign teachers to extracurricular activities would now appear to be a permissive subject of negotiations, while the effect on terms and conditions of employment remains mandatorily negotiable, and therefore both subjects would be arbitrable if otherwise arbitrable under the parties' agreement. In re Bridgewater-Raritan Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976). See N.J.A.C. 19:13-3.7.

We would also observe that the Board throughout its brief apparently confuses the obligation to negotiate with a requirement of agreement between the parties. This is simply not the case. Even if it were held that the assignment of teachers to extracurricular activities was a required subject of negotiations, which we do not, this would not require the Board to agree to any proposal offered by the Association that would inhibit the Board's ability to adequately staff its program of extracurricular activities. The obligation to negotiate is only one of the responsibilities conferred upon a board of education. The Commission must assume that all public employers will consider their total responsibilities, duties and obligations including, in the case of a board of education, its constitutional and statutory duty to provide a thorough

and efficient system of free public education, and would only agree to proposals that are consistent therewith.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcells voted for this decision.

Commissioner Forst voted against this decision.

Commissioners Hipp and Hurwitz abstained.

DATED: Trenton, New Jersey

April 19, 1977

ISSUED: April 20, 1977