

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,  
COLLEGE OF MEDICINE AND  
DENTISTRY OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-80-76

HOUSESTAFF ORGANIZATION OF  
THE COLLEGE OF MEDICINE AND  
DENTISTRY OF NEW JERSEY/COMMITTEE  
OF INTERNS AND RESIDENTS,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, denies the request of the State of New Jersey, College of Medicine and Dentistry of New Jersey for a permanent restraint of arbitration. The Chairman concluded, based on prior Commission and judicial decisions, that an issue relating to placement on the salary guide was mandatorily negotiable and that a grievance concerning such issue was arbitrable if otherwise arbitrable under the parties' contract.

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Appearances:

For the Petitioner, John J. Degnan, Attorney General  
(Melvin E. Mounts, of Counsel and on the Brief)

For the Respondent, Irwin Geller, Esq. and Ball, Hayden,  
Kiernan & Livingston, Esqs.  
(Craig H. Livingston, of Counsel and on the Brief)

DECISION AND ORDER

On January 25, 1980 the State of New Jersey ("State")  
filed a Petition for Scope of Negotiations Determination with  
the Public Employment Relations Commission seeking a determination  
of the negotiability/arbitrability of a matter in dispute with the  
Housestaff Organization of the College of Medicine and Dentistry  
of New Jersey/Committee of Interns and Residents ("C.I.R.").  
Briefs were filed by both parties, the last being received on  
February 26, 1980.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has  
delegated to the Chairman the authority to issue scope of negotia-

tions decisions when the negotiability of the issue(s) in dispute has been previously determined by the Commission and/or the judiciary.

By contract between the CIR and the College of Medicine and Dentistry ("College"), the parties created a system for placement of employees on the salary schedule also included in the contract. Basically, placement depended upon years of service with credit possible for prior programs when there has been a change of specialty. Three doctors in this unit who changed to psychiatry from other specialties were denied credit for the prior programs, and CIR filed grievances. The credits sought relate solely to compensation and do not affect assignment of duties by the College.

Despite the College's attempt to portray this matter as one involving evaluation of personnel, that is not the case. This is simply a salary case, with the clauses at issue providing a mechanical system for deciding what the rate of compensation shall be for the various employees. A similar argument was advanced in In re Willingboro Board of Education, P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979). Therein the Board claimed that the right to decide who qualified for sabbatical leave was a "criteria" decision outside the scope of negotiations. In its decision, the Commission adopted the interlocutory decision of the Special Assistant to the Chairman in which the Special Assistant carefully analyzed the employer's argument:

The Board refers to particular judicial decisions that it maintains support its contention that "criteria" type decisions relating, for example, to an evaluation of the qualifications and abilities of particular applicants are neither negotiable nor arbitrable. However the "procedures-criteria" dichotomy referred to by the Board has been consistently applied only in the context of negotiations and arbitrations relating to managerial prerogatives such as promotions, transfers, reductions in force (RIFs) and the like, not in the context of negotiations and arbitration concerning required subjects for collective negotiations such as sabbatical leave policies.

I conclude that to extend the "procedures-criteria" analysis to apply to mandatory subjects such as sabbatical leaves and other economic terms and conditions of employment would be to permit a public employer to unilaterally determine which teachers would receive particular economic fringe benefits that had been negotiated. There is no support found for this proposition in either Commission or judicial decisions in this State. 5 NJPER at 476.

The definition of mandatorily negotiable terms and conditions of employment was formulated in the Dunellen Trilogy.<sup>1/</sup> One of those cases, Englewood, is very much on point herein. It concerned one teacher's placement on a salary guide based on levels of training. Just as here, where the College maintains that it must evaluate the prior experience of the doctors, the Court noted in Englewood that "it may well be that the refusal to place Mr. Brodsky on the requested level was based on the Board's rejection of the course for which he was denied reimbursement." 64 N.J. at 6. Nevertheless, the dispute was held to be

<sup>1/</sup> Bd of Education of Englewood v. Englewood Teachers Assn, 64 N.J. 1 (1973); Burlington Cty College Faculty Assn v. Bd. of Trustees Burlington County College, 64 N.J. 10 (1973) and Dunellen Bd. of Education v. Dunellen Education Assn, 64 N.J. 17 (1973).

arbitrable. Therefore, in the instant matter there can be no doubt that the subject in dispute is mandatorily negotiable and hence arbitrable if otherwise arbitrable under the parties' contract.<sup>2/</sup>

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the request of the State of New Jersey, College of Medicine and Dentistry of New Jersey, for a permanent restraint of arbitration of these grievances relating to placement on the salary guide is denied.

BY ORDER OF THE COMMISSION

  
Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
April 9, 1980

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<sup>2/</sup> See Ridgefield Park Ed Assn v. Ridgefield Bd of Ed, 78 N.J. 144, 153-156 (1978) where the court discusses the proper procedure in resolving scope of negotiations cases and cited approvingly the Commission's description of its role in such cases:

"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 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." 78 N.J. at 154.