

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POINT PLEASANT BEACH TEACHERS'
ASSOCIATION,

Petitioner,

-and-

Docket No. SN-78-9

POINT PLEASANT BEACH BOARD OF
EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations matter filed with the Commission pursuant to an order of the Superior Court, Chancery Division, of Monmouth County, the Commission determines that contractual provisions dealing with contractual and statutory notice of non-renewal, and evaluation procedures, do not contravene specific portions of Title 18A. These provisions are found to relate to terms and conditions of employment and therefore they may be the subject of a contractual grievance arbitration proceeding if they are otherwise arbitrable under the parties' agreement. The Commission declines to rule on the issue of whether the grievance procedure giving rise to the dispute was conducted in a just and regular manner. This determination may more properly be made in an unfair practice proceeding or by the courts in a suitable action at law.

Owing to the fact that the Chancery Court has retained jurisdiction over the original dispute giving rise to the instant petition, the Commission has dispensed with its usual policy of concluding its determination with an appropriate order.

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Appearances:

For the Board, Harold Feinberg, Esq.

For the Association, Martin B. Anton, Esq.
(Mr. William E. Meyer, Of Counsel)

DECISION

On November 7, 1977, the Point Pleasant Beach Education Association (the "Association") filed a petition for a 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 Point Pleasant Beach Board of Education (the "Board") were within the scope of collective negotiations. ^{1/}

The dispute has been submitted to the Commission pursuant to an order, dated October 4, 1977, of the Hon. Henry A. Wiley, Superior Court, Chancery Division, Monmouth County. The matters in dispute were brought

^{1/} The Commission's authority to render such determinations is set forth in N.J.S.A. 34:13A-5.4(d), and the procedures governing these proceedings are provided in N.J.A.C. 19:13-1.1 et seq.

before the Chancery Division by the Association in a suit to confirm certain arbitration awards, allegedly based upon the collective negotiations agreement in effect between the parties. Judge Wiley maintained jurisdiction pending the Commission's determination of the within disputed matters.

The disputed arbitration awards declare that the Board failed to follow both statutory and contractual notice and evaluation procedures concerning the non-retention of six teachers employed by the Board. ^{2/} More specifically, the Commission is asked to determine whether the decision of the arbitrator that the Board: (1) failed to notify of contract renewal or non-renewal under the written agreement by, and as of, April 1; (2) failed to notify pursuant to statute as of April 30; and (3) failed to properly evaluate as per the written agreement; were within the scope of collective negotiations. Additionally, the Commission is requested to rule regarding the Board's contention that it was improperly denied adjournment of the aforementioned arbitration hearing.

At the outset the Commission notes that in a scope of negotiations determination, it is strictly limited to addressing the abstract issue of whether the matter in dispute is within the scope of collective negotiations. The Commission does not decide whether the facts are as alleged by either party, and therefore does not rule on the question of whether or not the grievance procedure giving rise to the dispute was conducted in a just and regular manner. This is a determination more properly made in an unfair practice proceeding or by the courts in a suitable action at law. See In re County College

^{2/} It is unclear whether or not all or any of the six teachers are tenured teachers pursuant to the New Jersey School Laws. This dispute is presently before the Commissioner of Education and is not a part of the within determination. However, the Hearing Examiner of the Department of Education has determined that these six teachers have acquired tenure pursuant to N.J.S.A. 18A:28-5(c) and that the Board of Education discontinued the Title I Program subsequent to the petitioner's filing of appeal before the Commissioner of Education.

of Morris, P.E.R.C. No. 77-64, 3 NJPER 165 (1977) and In re East Brunswick Board of Education, P.E.R.C. No. 77-69, 3 NJPER ____ (1977). Thus, the Commission declines to determine the final question set forward in the petition concerning the Board's contention that it was improperly denied an adjournment of an arbitration hearing.

With regard to the first question submitted for determination we note that we have long held that the managerial decision not to offer re-employment has the most vital impact on terms and conditions of employment. In these cases we have held mandatorily negotiable those procedures which provided inter alia for timely notice of non-renewal. The instant contractual provision provides in Article IX, B., (2), "Teachers shall be notified of their contract and salary status for the ensuing year no later than April 1." N.J.S.A. 18A:27-10 states that (non-tenured) teaching staff members shall be notified of the Board's decision to offer or not to offer re-employment for the ensuing year, "on or before April 30...." Assuming arguendo that the grievance and contractual clause apply to non-tenured teachers, we find nothing contained in the aforementioned contractual clause which annuls or modifies any section of the Education Law, N.J.S.A. 18A-1 et seq. If it applies to tenured teachers, there are no pertinent notice provisions in Title 18A which would preclude the Board from agreeing to an April 1 notification date.

In addition, we have held that parties can negotiate concerning terms and conditions of employment, but only to the extent that such negotiations do not lead to any results which are inconsistent with provisions of specific statutes regarding terms and conditions of employment or with the authority of the public employer. (See In re Cinnaminson Board of Education, P.E.R.C. No. 78- (1977) and the cases cited therein at note #9.) As we have found that the contractual clause forming the basis for this dispute

relates to a term and condition of employment and is not in contravention of any provision of Title 18A, we hold that the notice provision contained therein is a mandatory subject of negotiations and is within the scope of collective negotiations. ^{3/}

The second issue presented in this matter concerns the propriety of the arbitrator's decision that the Board failed to comply with the statutory notice provision contained in N.J.S.A. 18A:27-10. In the Cinnaminson case, supra, we held mandatorily negotiable a collective negotiations agreement which included a provision identical to the April 30 "notice" requirement contained in N.J.S.A. 18A:27-10. The effect of this inclusion, when construed in conjunction with the contractual grievance procedure, was to provide another forum for the resolution of a dispute concerning this notice. N.J.S.A. 34:13A-5.3. Absent such a provision, the Commissioner of Education would resolve any disputes arising under Title 18A. But with the amendment of N.J.S.A. 34:13A-5.3 [this section was amended by c. 123 of the Public Laws of 1974], grievance procedures established by agreement of the parties shall be utilized for the resolution of disputes covered by the provisions of the agreement. ^{4/}

^{3/} It should be noted that nothing in our determination is inconsistent with the opinions of the Superior Court Appellate Division contained in Union County Board of Education v. Education Assn., 145 N.J. Super. 435 (1976); certif. denied 74 N.J. 248 (1977) or Board of Education City of Englewood v. Teachers' Assn., 150 N.J. Super. 265 (1977), certif. denied, ___ N.J. ___ (1977). In the former case the court held that local boards could not be compelled to negotiate the criteria or guidelines used in making the selection of specific individuals whose contracts are not to be renewed or to negotiate re-employment rights for those teachers selected for non-renewal as these issues were governed by N.J.S.A. 18A:28-9. The latter case noted that a reduction in force decision pursuant to N.J.S.A. 18A:28-9 could not be the subject of negotiation or arbitration, but the court specifically noted that the dispute being adjudicated did not allege that the Board failed to comply with the notice provisions of the collective negotiations agreement or N.J.S.A. 18A:27-10. The instant contract clause relates to just such a "notice" provision and does not infringe or vary the Board's rights and duties as provided in either N.J.S.A. 18A:27-10 or 18A:28-9.

^{4/} Red Bank Board of Education v. Warrington, 138 N.J. Super. 564 (App. Div. 1976).

As stated above, notice of non-reemployment intimately and directly affects terms and conditions of employment. As such, the inclusion of this section, not being inconsistent with any provisions of Title 18A, is a mandatory subject of negotiations and may be the subject of arbitration, if otherwise arbitrable under the parties' agreement.

The final question posed for resolution concerns the Board's alleged failure to follow agreed upon evaluation procedures in relation to the aggrieved teachers. We have consistently held that contractual evaluation provisions containing minimal procedural safeguards relate to terms and conditions of employment and constitute a mandatory subject for negotiations.^{5/} The contractual procedures provided by the instant agreement in Article XII contains the type of minimal procedural safeguards found to be mandatory subjects of negotiations. These procedures are specifically made subject to the applicable portions of Title 18A [see Schedule F of the Agreement]. We therefore determine that these matters may properly be the subject of a contractual grievance arbitration, if otherwise arbitrable under the parties' agreement.

Based upon the entire record in this matter, the Commission determines that the instant disputed matters relate to terms and conditions of employment and do not contravene or modify any specific statutory provision of Title 18A. Therefore, these matters are mandatory subjects of negotiation (as opposed to illegal subjects) and they may be subject to contractual grievance arbitration mechanisms if they are otherwise arbitrable under the parties'

^{5/} In re Englewood Board of Education, P.E.R.C. No. 76-23, 2 NJPER 72 (1976); In re City of Bayonne, P.E.R.C. No. 76-25, 2 NJPER 173 (1976); In re Wyckoff Board of Education, P.E.R.C. No. 77-41, 3 NJPER 79 (1977). See also Clifton Board of Education v. Teachers' Assn., Docket No. A-1593-76 (App. Div., Dec. 13, 1977), wherein the court dissolved an order permanently enjoining arbitration under a "just cause" provision of a collectively negotiated grievance and evaluation procedure.

agreement. Consistent with past Commission practice in scope of negotiations proceedings, the Commission will not interpret the parties' agreement. All other matters relating to confirmation and enforcement of the disputed arbitration awards are left to the court for determination. ^{6/}

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst and Parcels voted for this decision. Commissioner Hurwitz abstained. Commissioners Hartnett and Hipp were not present.

DATED: Trenton, New Jersey
January 19, 1978
ISSUED: January 24, 1978

^{6/} In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975);
and In re Township of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977).