

P.E.R.C. NO. 2005-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY VOCATIONAL SCHOOL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-077

SUSSEX COUNTY VOCATIONAL-TECHNICAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Sussex County Vocational School Board of Education for a restraint of binding arbitration of a grievance filed by the Sussex County Vocational-Technical Education Association. The grievance contests the decision not to pay the school nurse a stipend for services provided to Charter School students. The Commission concludes that the dispute over the contractual recognition clause does not present a negotiability issue and the Association's compensation claim is legally arbitrable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Weiner Lesniak, attorneys
(Mark A. Tabakin, of counsel and on the brief;
Brian J. Aloia, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Gail Oxfeld Kanef, on the brief)

DECISION

On June 7, 2004, the Sussex County Vocational School Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Sussex County Vocational-Technical Education Association. The grievance contests the decision not to pay the school nurse a stipend for services provided to Charter School students.

The parties have filed briefs, exhibits and certifications. These facts appear.

The parties' collective negotiations agreement is effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration. The Association represents "full or part-time day school certificated personnel whose positions require teaching certificates and whose duties are non-administrative, and all secretaries. Excluded from the unit are custodians/maintenance personnel, Adult School instructors, and non-bargaining personnel.

According to the Board, the recognition clause does not encompass school nurses who are not required to have teaching certificates. According to the Association, it does. The Association has filed certifications of Jeanne Apryasz and Linda DeLorenzo, both of whom served as Association vice-presidents. Apryasz states that the nurse was always in the negotiations unit, that the Association has always collected dues from the nurse, and that during the 1999-2000 school year the Association asserted a claim on behalf of the school nurse for an additional stipend and that the claim was settled during the 2000-2001 school year. DeLorenzo states that previous contracts had listed specific and multiple titles, including that of nurse, in the recognition clause, but that the parties had agreed to change to the more generalized description now used in the recognition clause.

Rosemary C. Murray is a school nurse. On September 22, 2003, the Board and Murray entered into an initial one-year employment contract from October 7, 2003 through June 30, 2004, at an annual salary of \$47,400, Level 7, prorated to \$41,712.

At a December 15, 2003 Board meeting, Murray asked the Board to review her salary. On January 6, 2004, the Board notified Murray that it believed her salary request made during the interview process was met and that it was adequate for the working conditions. On January 12, the Association filed a grievance contesting the denial of "request for stipend pay to the school nurse for providing health services to the Charter School students."

On January 12, 2004, the principal referred the grievance to the superintendent and the Board. The Association did not present the grievance to the Board, but instead demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer might have.

The Board argues that the nurse is not included in the Association's negotiations unit. It relies on West Essex Bd. of Ed., D.U.P. No. 93-3, 18 NJPER 379 (¶23170 1992), dismissing an unfair practice charge where the disputed title was not in the charging party's negotiations unit.

The Association argues that the recognition clause is not as unambiguous as the Board claims and that recognition clause issues are within the scope of negotiations. It relies on City of Hoboken, P.E.R.C. No. 96-16, 21 NJPER 348 (¶26214 1995), aff'd 23 NJPER 140 (¶28068 App Div. 1996), holding that the interpretation of a recognition clause is a question for the arbitrator.

In Hoboken, the employer asserted that, when performing certain duties, an employee was not a member of the negotiations unit as defined by the recognition clause and therefore a claim seeking overtime compensation was not arbitrable. We found, however, that the employer's assertion depended on an interpretation of the contractual recognition clause, and a factual determination on the merits as to whether the grievant was performing duties within the meaning of the collective negotiations agreement. We held that these questions properly

belonged before an arbitrator instead of us in a scope of negotiations case. Since the grievance involved the mandatorily negotiable issue of compensation, we declined to restrain arbitration.

We reach the same result here. This dispute over the reach of the contractual recognition clause does not present a negotiability issue and the Association's compensation claim is legally arbitrable. See also Spring Lake Borough, P.E.R.C. No. 2003-38, 28 NJPER 579 (133180 2002). West Essex is distinguishable because that case involved an unfair practice charge within this agency's jurisdiction rather than a grievance within an arbitrator's jurisdiction.

ORDER

The request of the Sussex County Vocational School Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: September 30, 2004
Trenton, New Jersey
ISSUED: September 30, 2004