

P.E.R.C. NO. 2007-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANALAPAN-ENGLISHTOWN
REGIONAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2007-016

MANALAPAN-ENGLISHTOWN
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Manalapan-Englishtown Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Manalapan-Englishtown Education Association. The grievance contests the salary guide placement of a teaching staff member who returned to work following a disability leave. The Commission holds that an employee's placement on a negotiated salary guide is normally mandatorily negotiable. The Commission states that the parties' conflicting arguments about whether the contract provides credit for prior teaching experience can be made to the arbitrator.

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, Brown & Connelly, LLC, attorneys
(Patricia D. Connelly, on the brief)

For the Respondent, Detzky & Hunter, LLC, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On October 3, 2006, the Manalapan-Englishtown Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Manalapan-Englishtown Education Association. The grievance contests the salary guide placement of a teaching staff member who returned to work following a disability leave. We decline to restrain arbitration of the compensation issue.

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

In 1988, the Board brought tenure charges against an elementary school teacher. In March 1988, the teacher's request for a disability pension was approved. The Board agreed to amend her status to "voluntary sick leave disability" and not to proceed with the tenure charges.

In 1998, the teacher sought reinstatement to her teaching position. The Board of Trustees of the Teachers' Pension and Annuity Fund found that she could resume her former teaching duties without restriction.

In 1999, Board administrators interviewed the teacher for a teaching position. The administrators recommended that she not be rehired.

After a hearing before an Administrative Law Judge, the Commissioner of Education ordered the Board to reinstate the teacher to her former position "with all emoluments and back pay to which she is entitled." The Board moved for a stay of the decision, but it was denied. Accordingly, the Board rehired the teacher for the 2005-2006 school year.

The State Board of Education affirmed the Commissioner's decision. The Board's appeal to the Appellate Division is pending. A related action seeking enforcement of the Commissioner's decision is also pending before the Appellate Division.

When it rehired the teacher, the Board placed her on step six of the salary guide - where she would have been in 2005 had she been hired as a new hire in 1999 without credit for her teaching experience. On June 20, 2006, the Association wrote to the superintendent requesting that the Board change the teacher's salary guide placement for the 2005-2006 and 2006-2007 school years and stating that a grievance would be filed setting forth the relief sought. The Board responded that since the matter was in litigation it could only discuss those issues with the teacher's attorney. On August 24, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

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

_____The Board concedes that compensation and salary guide placement are mandatorily negotiable in general, but argues that this teacher's salary guide placement is neither negotiable nor arbitrable because it involves an interpretation of a decision of the Commissioner of Education that is pending in the Superior Court. The Board also asserts that the parties' contract does not provide for rehired teachers to get credit for teaching experience.

The Association argues that proper placement on a salary guide is mandatorily negotiable and legally arbitrable. It asserts that the teacher's years of teaching service should have been considered and that she should have been placed on the top step of the salary guide with back pay calculated at that level as well.

An employee's placement on a negotiated salary guide is normally mandatorily negotiable and legally arbitrable. See Middletown Tp. and Middletown PBA Local 124, 334 N.J. Super. 512, 516 (App. Div. 1999), aff'd 166 N.J. 112 (2000); Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986). Belleville rejected the argument that because N.J.S.A. 18A:29-9 addresses salary guide placement, such issues are appropriate for resolution by the Commissioner of Education rather than through the negotiations process. 209 N.J. Super. at 97-98. A grievance filed by a majority representative seeking adherence to the terms of a negotiated agreement concerns the

interests of all employees it represents and not just those of the employee who is directly affected. See Fair Lawn Bd. of Ed., P.E.R.C. No. 79-88, 5 NJPER 225 (¶10124 1979), aff'd 174 N.J. Super. 554, 559 (App. Div. 1980) (individual employee's decision to pursue a private remedy in another forum does not affect majority representative's right to prosecute a grievance). See also Jackson Tp. Bd. of Ed. and Jackson Ed. Ass'n, 334 N.J. Super. 162, 173 (App. Div. 2000), certif. den. 165 N.J. 676 (2000).

This grievance is legally arbitrable. It alleges a breach of a contractual salary guide provision and is conceptually different from an action to enforce a decision of the Commissioner of Education. The parties' conflicting arguments about whether the contract provides credit for teaching experience can be made to the arbitrator. Ridgefield Park; cf. Belleville (credit for prior service was contractual issue).

ORDER

The request of the Manalapan-Englishtown Regional Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: January 25, 2007

Trenton, New Jersey