

P.E.R.C. NO. 2010-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HANOVER PARK REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-031

HANOVER PARK REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Hanover Park Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Hanover Park Regional Education Association. The grievance challenges a teacher's placement on the salary guide. The Board alleges the teacher's placement was an error and that it has a managerial prerogative to recoup the salary overpaid to her. The Commission holds that placement on the salary guide is a mandatorily negotiable compensation issue.

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, Lindabury, McCormick, Estabrook &
Cooper, P.C., attorneys (Dennis McKeever, of counsel)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION

On October 22, 2009, the Hanover Park 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 Hanover Park Regional Education Association challenging a teacher's placement on the salary guide. The Board claims that the teacher was incorrectly placed on the guide and was overpaid for the 2006-2007 school year. We decline to restrain binding arbitration.

The parties have filed briefs and exhibits. The Board has filed the certification of its Business Administrator/Board Secretary. These facts appear.

The Association represents teachers and other personnel. The parties' collective negotiations agreement is effective from July 1, 2007 through June 30, 2009. The grievance procedure ends in binding arbitration.

On August 19, 1998, the grievant was hired as a long-term physical education substitute teacher and was paid a per-diem rate based on the BA-Step 1 salary guide of the collective negotiations agreement. On or about April 29, 1999, she was hired as a full-time teacher for the 1999-2000 school year at BA-Step 1 of the Agreement.

The grievant remained in her full time position accepting employment contracts at BA-Step 2 of the agreement for the 2000-2001 and 2001-2002 school years.^{1/} She was placed on BA-Step 3 of the agreement for the 2002-2003 and 2003-2004 school years.^{2/} She was placed on the BA-Step 4 of the agreement for the 2005-2006 school year.

The grievant was paid at BA-Step 6 for the 2006-2007 school year which the Board alleges was an error resulting in a \$1,218 overpayment of salary for that year. She was notified by the Board of the error and that the Board intended to recoup the salary overpayment. The Association filed a grievance alleging

1/ The teacher received salary increases, but remained on Step 2 after finalization of the collective negotiations process.

2/ The grievant was on maternity leave from February 26, 2004 through June 30, 2005.

that the grievant was on the appropriate step of the salary guide because her service as a long term substitute should be credited towards her guide placement. The Board denied the grievance on March 12, 2008 and the Association demanded binding 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 the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere

with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405]

The Board argues that it has a managerial prerogative to recoup payments made to the grievant under an erroneous salary guide placement. It cites education law rulings that a school district has a right to recoup overpayments made to personnel. The Association responds that the grievance contests the teacher's salary guide placement, which is a mandatorily negotiable subject. The Board replies that because this dispute does not arise from the collective negotiations process, but rather from a mistake it made on a fully negotiated salary guide, the dispute is not mandatorily negotiable and the Board must retain its right to recoup monies erroneously paid to personnel.

We have repeatedly held that under the negotiability balancing test, placement on the salary guide is a mandatorily negotiable compensation issue. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Fair Haven Bd. of Ed., P.E.R.C. No. 2009-65, 35 NJPER 154 (¶56 2009); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997),

aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000); Cranford Bd. of Ed., P.E.R.C. No. 2003-19, 28 NJPER 415 (¶33151 2002). The arbitrator may determine whether the grievant was placed on the correct step of the salary guide. The Board's arguments that an error was made relate to the merits of the grievance, which is outside our narrow scope of negotiations jurisdiction. Ridgefield Park.

As for the issue of recoupment, the Board's reliance on Sarcone v. Hackettstown Bd. of Ed., OAL Dkt. No. EDU 5952-03 Agency Dkt. No. 165-5/03, 2005 N.J. AGEN LEXIS 730 (May 26, 2005), is misplaced. That case held that as matter of education law, the board had a right to recoup an overpayment. The case also held, however, that the employee's contractual claim was outside the Commissioner of Education's jurisdiction and the Commissioner referred that matter to this agency.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: June 24, 2010

Trenton, New Jersey