

P.E.R.C. NO. 2014-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PINELANDS REGIONAL BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-007

PINELANDS REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment relations Commission denies the request of the Pinelands Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Pinelands Regional Education Association. The grievance contests the salary guide placement of a newly-hired teacher who was also given the stipend position of high school football coach. The Commission holds the issue of initial salary guide placement is mandatorily negotiable.

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, Cooper Levenson April Niedelman & Wagenheim, P.A., attorneys (Amy L. Houck, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys (Keith Waldman, of counsel and on the brief; Stacey C. Schor, on the brief)

DECISION

On August 16, 2013, the Pinelands 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 Pinelands Regional Education Association. The grievance contests the salary guide placement of a newly-hired teacher who was also given the stipened position of high school football coach.

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

The Association represents all certified regular and part time professional staff and certain other personnel. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 2011 through June 30, 2014. The grievance procedure ends in binding arbitration. The agreement contains salary guides for teaching staff based upon both years of experience and advanced degrees. It also contains stipends for extracurricular positions, including athletic coaches.

In the Spring of 2013, the Board hired a teacher, with 13 years prior teaching experience and a Master's degree to teach Social Studies and to be the Head High School football coach.^{1/} His compensation for the coaching job was listed at the amount set forth in the agreement, \$8,951.00. For his teaching post, he was hired at Step 21 of the Master's salary guide at \$76,212.00.

On May 10, 2013 the Association initiated a grievance asserting that the salary guide placement of the social studies teacher violated several provisions of the Board-Association agreement. The grievance was denied by the Superintendent and the Board. On July 15, 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, 154 (1978), states:

^{1/} The Board approved his hiring as football coach at its March, 2013 meeting and as a Social Studies teacher at its April, 2013 meeting.

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 cannot consider the merits of the grievance or the parties' contractual defenses.^{2/}

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982)

articulates a three-part test for determining negotiability:

[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

^{2/} The Board, in responding to the grievance, noted that Article 11J of the agreement provides: "The steps of the attached salary guide are not representative of actual years of experience." Whether this language provides a defense to the grievance is a determination that only the arbitrator can make.

negotiations even though it may intimately affect employees' working conditions.
[Id. at 404-05]

The Board asserts that the grievance directly challenges its decision to hire the social studies teacher/football coach and thus significantly interferes with a managerial prerogative. It asserts that the contract provisions identified by the Association were either not pertinent or not violated by its actions.

The Association argues that the grievance does not oppose the staff member's hiring but challenges his placement on the negotiated salary guide, an issue which the Commission and the Courts have consistently held to be mandatorily negotiable and subject to binding grievance arbitration. It cites numerous cases including Manalapan-Englishtown Regional Bd. of Ed. and Manalapan-Englishtown Ed. Ass'n, P.E.R.C. No. 2007-42, 33 NJPER 3 (¶3 2007), aff'd 35 NJPER 230 (¶82 App. Div. 2009), 2009 N.J. Super. Unpub. LEXIS 1980; and Belleville Bd. of Ed. and Belleville Ed. Ass'n, 209 N.J. Super. 93 (App. Div. 1986).

The Board's reply brief reiterates its characterization of the grievance as a challenge to a hiring decision. It does not respond to the Association's discussion of Commission and Court cases concerning salary guide placement disputes.

We and the courts have consistently held that initial placement on the salary guide is a mandatorily negotiable issue.

In general, it intimately and directly affects employee work and welfare and does not significantly interfere with any governmental policy determinations. Therefore, Court and Commission cases have repeatedly held that an employer does not have a prerogative to set a new employee's salary unilaterally. Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (1999), aff'd o.b. 166 N.J. 112 (2000); Belleville Bd. of Ed., supra., Stanhope Bor. Bd. of Ed., P.E.R.C. No. 90-81, 16 NJPER 178 (¶21076 1990); Gloucester Tp., P.E.R.C. No. 87-42, 12 NJPER 805 (¶17308 1986); Somerset Cty., P.E.R.C. No. 86-136, 12 NJPER 453 (¶17171 1986); see also Middlesex Cty. Pros., P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990), aff'd 255 N.J. Super. 333 (App. Div. 1992) (credit for prior governmental service mandatorily negotiable). It is also well-established that N.J.S.A. 18A:29-9 does not preempt negotiations. Belleville Bd. of Ed.

In many, if not most, salary guide placement disputes, an employer sought to place a new employee at a lower salary guide step than that sought by the union. See, e.g., Middletown; Belleville. However, even where this is not the case, there are significant legislative policy reasons for requiring negotiations under N.J.S.A. 34:13A-5.3. Compare Troy v. Rutgers, 168 N.J. 354, 372-376 (2001) (reiterating policies favoring collective negotiations rather than individual negotiations over employment

conditions). In Stanhope Bd. of Ed., we found that the Board violated the Act when it unilaterally gave a teacher more salary guide credit than she would have received under Board policy. The Board did so in order to recruit a highly qualified candidate for a hard-to-fill teacher of the handicapped position when she would not accept a lower salary. 15 NJPER at 685-686. While the Hearing Examiner was "sympathetic" to the Board's desire to retain a candidate whom it believed was "head and shoulders" above other applicants, we adopted her conclusion that the Board's concerns had to be addressed with the majority representative. H.E. No. 90-22, 15 NJPER 682, 686 (¶20277 1989); 16 NJPER at 180.

We do not address the Association's claim that the higher step placement was an effort to inflate the teacher's football coaching stipend. However, even if that were the case, no showing has been made by the Board that it was motivated to do so because it could not otherwise hire a high school football coach. Nor has the Board claimed that it could not hire a social studies teacher unless his salary was set at a level seven years above his actual teaching experience. Even in Vernon Tp. Bd. of Ed., P.E.R.C. No. 2001-49, 27 NJPER 130 (¶32049 2001), where the Board claimed it needed to place hard to find math and science teachers on elevated steps in order to recruit them, we allowed arbitration of a grievance challenging such salary placements.

ORDER

The request of the Pinelands Regional Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioner Jones was not present.

ISSUED: April 24, 2014

Trenton, New Jersey