

P.E.R.C. NO. 2015-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-021

BLOOMFIELD EDUCATION
SECRETARIES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Bloomfield Township Board of Education for a restraint of binding arbitration of a grievance filed by the Bloomfield Education Secretaries Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it failed to recall two secretaries who had been laid off for economic reasons. The Commission finds that seniority for layoff and recall purposes is generally a mandatorily negotiable subject, and school employees who lack tenure are not precluded from negotiating recall rights.

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, Mizrahi & Associates, attorneys
(Aaron Mizrahi, of counsel)

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

DECISION

On October 17, 2013, the Bloomfield Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a permanent restraint of arbitration of two related grievances filed by the Bloomfield Educational Secretaries Association asserting that the Board violated the parties collective negotiations agreement, Board policy, tenure laws and regulations when it failed to recall (i.e. re-employ) two secretaries who had been laid off for economic reasons.

The parties have filed briefs and exhibits but have not filed certifications. See N.J.A.C. 19:13-3.6(f)(1). These facts appear.

The Association represents the Board's "office employees . . . whose salaries are determined in accordance with the office personnel salary guide." The Board and the Association are parties to a collective negotiations agreement covering the period from July 1, 2011 through June 30, 2014. The grievance procedure ends in binding arbitration.^{1/} Article 17H provides:

In the event of a reduction in force, layoff or furlough, the Board must utilize a seniority list, whereas the last secretary hired, will be the first removed. Recalled employees shall have all benefits restored to them . . .

At the end of the 2012-2013 school year, as part of a reduction in force (RIF), the Board laid off two non-tenured secretaries. Prior to working as secretaries, both had worked as office aides.

On July 29, 2013, the Association filed two grievances with the Board asserting that the employer had violated the tenure and seniority rights of the laid off secretaries by not employing them either as office aides or having one of them recalled into a secretarial position created by the Board within 30 days of notifying the employees of their layoffs.^{2/} The Board denied the grievances at all steps of the grievance procedure and the

1/ The agreement limits the types of grievances that can be submitted to binding arbitration.

2/ The Board's brief asserts that prior to the filing of the Association's grievances, one of the laid off secretaries accepted employment as an office aide.

Association demanded arbitration (Docket No. AR-2014-201). 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 may have. We specifically do not address the Board's contention that the grievances are untimely and that the subjects of the grievances are not contractually arbitrable.

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

The Board argues that the office aide positions are not included in the collective negotiations unit, and accordingly, the Association lacked standing to file the grievances. It argues that arbitration would infringe on its prerogative to determine staffing levels and lay off non-tenured personnel when necessary. It further asserts that the grievances seek a determination that the employees the Association asserts should be recalled have tenure rights. The Board argues that the contract bars grievances by non-tenured employees challenging layoffs or non-renewals.

The Association responds that the grievances address recall rights of laid off employees, a mandatorily negotiable subject. It also contends that job security and seniority for employees is also, absent preemption, mandatorily negotiable.

Initially, we note that whether the Association has standing to file the grievances does not involve a negotiability question. We note that a grievance involving recall rights necessarily arises where the affected individuals were separated from employment. To the extent the Board asserts that the position of

office aide is not part of the unit represented by the Association, we will not decide that question. We have held that such issues are arbitrable. See Caldwell-W. Caldwell Bd. of Ed., P.E.R.C. No. 88-110, 14 NJPER 342, 343 (¶19130 1988); Mount Olive Bd. of Ed., P.E.R.C. No. 2013-71, 39 NJPER 474, 476 (¶150 2013).

Seniority as it relates to layoffs and recall is generally a mandatorily negotiable subject, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). School employees who may lack tenure, are not precluded from negotiating recall rights. See Pennsville Township Bd. Of Ed., P.E.R.C. No. 84-21, 9 NJPER 586 (¶14246 1983), and cases discussed therein including, Woodbridge Tp. Bd. of Ed. and Plumbers & Steamfitters, P.E.R.C. No. 77-51, 3 NJPER 149 (1977), aff'd 159 N.J. Super. 83 (App. Div. 1978).

The first (#001) of the Association's two July 29, 2013 grievances asserts that, within 30 days after the Board RIF'd the two secretaries, it created another secretarial position and proposed to have it filled by someone other than the two laid off employees. The Board does not dispute this factual assertion in either its initial or reply brief nor does it contradict the Association's statement that the new employee is not tenured. Whether this position should go to one of the laid off employees, including the preliminary issue of whether such a dispute is

contractually arbitrable, are issues for the arbitrator.^{3/} So too are the issues raised in Grievance #002 including, contractual arbitrability, standing, timeliness and the ultimate issue as to whether one or both of the laid off secretaries are entitled to be recalled to office aide positions.^{4/}

ORDER

The request of the Bloomfield Township Board of Education for a permanent restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: August 14, 2014

Trenton, New Jersey

3/ This case is distinguishable from West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 2004-85, 30 NJPER 235, 237 (¶88 2004), as the grievance is not asserting that laid off, non-tenured, secretaries should be able to be recalled to displace tenured personnel.

4/ For employees lacking statutory tenure, a school employer and the representative of its employees are free to agree to contract language either allowing or barring non-renewals to be subject to binding arbitration. See Hanover Tp. Bd. of Ed. and Hanover Tp. Ed. Ass'n, P.E.R.C. No. 99-7, 24 NJPER 413 (¶29191 1998), aff'd 25 NJPER 422 (¶30184 App. Div. 1999)