

P.E.R.C. NO. 2017-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-011

QUAKERTOWN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Board of Education for a restraint of binding arbitration of a grievance challenging the placement of new staff members on the salary guide, finding that the Board's argument that the Association waived negotiations under the parties' successor agreement raises an issue of contractual arbitrability outside of the Commission's jurisdiction in a scope of negotiations proceeding.

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, Machado Law Group, attorneys
(Isabel Machado, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Samuel B. Wenocur, of counsel)

DECISION

On August 19, 2016, the Franklin Township Board of Education (Board) petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Quakertown Education Association (Association) that alleges that the Board misplaced new staff members on the salary guide. We deny the Board's request for a restraint of arbitration.

The Board filed a brief and exhibits. The Association filed a brief, exhibits and the certification of its Vice President Mina Nace.

The Association represents teachers and other education personnel employed by the Board. The Board and the Association

are parties to a Memorandum of Agreement effective from 2014 through 2017 (Agreement). The grievance procedure ends in binding arbitration.

Article VIII (Employment), Section A (Teacher Placement on the Guide) of the Agreement, states as follows:

- 1) Each returning teacher shall be placed on his/her proper year/level of the current salary schedule.
- 2) All newly hired teaching staff will be placed on the appropriate step of the guide based on their previous years of experience. Additional credits may be given to individuals at the discretion of the Board.

This language also appeared in the two prior agreements between the parties, which were effective from 2009-2011 and 2011-2014.

Nace certifies that as of the 2013/2014 school year, the Board hired Karen Gerth and Patricia Ann Pillon and that they should have been placed, respectively, at step 13 and the top step of the salary guide based on prior teaching experience. However, both were placed at step zero. Nace certifies that at step zero Gerth received an annual salary of \$51,008 rather than \$68,754 at step 13.^{1/} Nace further certifies that the parties' past practice and the 2009-2011 agreement provided for newly hired teachers' salary guide placement that reflected their prior teaching experience. For example, if a newly hired teacher had

^{1/} Pillion ended her employment with the Board after the 2013/2014 school year, and Gerth is still employed by the Board.

five years of experience, he/she would be placed on step five of the salary guide.

On November 15, 2013, the Association filed a grievance regarding new staff members' placement on the salary guide. On November 21, the Superintendent responded that in placing new hires at step zero the Board was following statutory guidelines for fiscal accountability. The Board heard the Association's grievance at its January 13, 2014 meeting and affirmed the Superintendent's position. On February 10, the Association filed a request for submission for a panel of arbitrators.

Nace certifies that in April 2014 the parties agreed to the terms of the 2011-2014 agreement. During negotiations for the Agreement, the Association denied the Board's request to withdraw all pending grievances, but agreed to hold the instant grievance in abeyance pending the conclusion of negotiations.

In August 2015, the parties reached a Memorandum of Agreement for 2014-2017. Schedule A included a salary schedule for 2014/2015, 2015/2016 and 2016/2017 for veteran teachers, and Schedule B included a salary schedule for the same years for newly hired teachers, effective for employees hired as of July 1, 2014.

The Board asserts that the Association waived its right to negotiate the placement of new hires on the salary guide when it entered into the Agreement that included a salary schedule for

new hires. The Association responds that the Board's waiver argument cannot serve as a basis to restrain arbitration, and there was no waiver of the pending arbitration.

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 contractual merits of the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The central issue before us is whether initial placement on a salary guide is a mandatorily negotiable term and condition of employment. It is well-settled that the answer to that question is affirmative. E.g., Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112.

The Board's argument centers around whether the Association waived its right to grieve new hires' placement on the salary guide when it entered into the Agreement that contained salary schedules for new hires. Instead of addressing negotiability, the Board's argument addresses contractual arbitrability. We may not consider contractual arbitrability when making a scope of negotiations determination, however such issues may be raised to the arbitrator. Ridgefield Park.

The employer relies on Union City, P.E.R.C. No. 2000-84, 26 NJPER 213 (¶31087 2000) in asserting that we have considered waiver arguments in a scope of negotiations context. However, we did not consider the issue of waiver in Union City, but rather

whether an alternate statutory appeal procedure trumped binding arbitration. Indeed, we have continually rejected waiver arguments in the scope context. University of Medicine and Dentistry of New Jersey, P.E.R.C. No. 2001-31, 27 NJPER 28 (¶32015 2000); see also, Township of Wayne, P.E.R.C. No. 2003-67, 29 NJPER 120 (¶37 2003), State of New Jersey (Dept. of Corrections), P.E.R.C. No. 2002-7, 27 NJPER 330 (¶32118 2001).

ORDER

Franklin Board of Education's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: January 26, 2017

Trenton, New Jersey