

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-135

MIDDLETOWN TOWNSHIP EDUCATION ASSOCIATION,

Respondent,

SYNOPSIS

The Public Employment Relations Commission grants the Middletown Township Board of Education's request for a restraint of binding arbitration of a grievance filed by the Middletown Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement, past practices, and a prior grievance settlement when it transferred certain employees and did not record in its minutes whether the transfers were voluntary or involuntary. The Commission finds that the Association may not legally arbitrate the transfer decision. The Commission further finds that negotiations over the Board's decision not to record transfers as involuntary or voluntary in its minutes would significantly interfere with the Board's prerogative to determine how to keep its minutes and, in some cases, a requirement that the reason for a transfer be specified might violate the privacy protections of the Open Public Meetings Act.

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.

P.E.R.C. NO. 97-86

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Respondent,

Appearances:

For the Petitioner, Kenney & Gross, attorneys
(Mark S. Tabenkin, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Kenneth I. Nowak, of counsel)

DECISION AND ORDER

On June 7, 1996, the Middletown Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Middletown Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement, past practices, and a prior grievance settlement when it transferred certain employees on July 25, 1995 and did not record in its minutes whether the transfers were voluntary or involuntary.

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

The Association represents the Board's professional and secretarial employees. The parties entered into a collective

negotiations agreement effective from July 1, 1993 through June 30, 1996. The grievance procedure ends in binding arbitration.

Article XXIV is entitled Voluntary Transfers and Reassignments. Sections 24.1 and 24.2 provide:

24.1 Not later than June 1, the Superintendent will have posted in all school buildings and have forwarded to the President of the Association a list of known vacancies that occur for the following year.

24.2 A professional employee who desires a change in grade, subject, and/or building assignment, may submit to the Superintendent a written statement of his/her requests with a copy to his/her principal not later than June 15.

Article XXV is entitled Involuntary Transfers and Reassignments. Sections 25.1 and 25.2 provide:

25.1 The Board agrees that if any professional employee is to be transferred or reassigned other than during the regular summer vacation, the Superintendent shall, except in cases of emergency, notify him/her of such transfer or reassignment as soon as practical, but no later than fifteen (15) school days prior to the effective date of the transfer or reassignment. Should a transfer be made during the regular summer vacation, the transferee shall be notified by registered mail at his/her last known address.

25.2 In the event of a transfer or reassignment, the professional employee involved, at his/her option, may request a meeting with the Superintendent or his/her designee to discuss the transfer.

In September 1985, the Association filed a grievance contesting the listing of all transfers as involuntary. By March 1986, the grievance was heading to arbitration. The superintendent, Guy Sconzo, then prepared a six-point procedure that the Board would

follow when determining whether or not a transfer was voluntary. He detailed that procedure in a March 14, 1986 internal letter copied to the Association's president. The president, Diane Swaim, advised the superintendent on May 27, 1986 that the terms in the March 14, 1986 letter satisfactorily settled the grievance.

Eight years later, on June 7, 1994, Swaim forwarded a copy of Sconzo's 1986 letter to a new superintendent, Peter Merluzzi. The letter reminded him of the six-point procedure.

During a July 26, 1994 Board meeting, certain employee transfers were addressed. The Board's minutes did not list the transfers as voluntary or involuntary. When asked about this by an Association representative, the Board responded that no such delineations would be made.

The Association's grievance co-chair, Francis D'Alessandro, wrote to the Board on August 5, 1994 and asked it to review the contract, past practices, and the 1986 grievance resolution. Further, he asked that the Board correct its July meeting minutes and do so by the next meeting.

On August 22, 1994, the Board administrator, James Moran, advised D'Alessandro that the Board intended to meet the requirements of the contract and was willing to discuss the situation. However, he asserted that:

It is not in the interest of the employee or the school district to list transfers as involuntary on the Board agenda.

The Board would only agree to do so if the employee appeared at the Board meeting and made such a request publicly.

On August 30, 1994, Swaim wrote to the Board asking it to revert to the contractual language, past practice and language found in the 1986 grievance settlement.

On July 25, 1995, the Board adopted a resolution transferring a number of teachers. The Board minutes did not indicate whether the transfers were voluntary or involuntary.

On August 8, 1995 the Association filed a grievance which states:

The MTEA, on behalf of the MTEA members "transferred" on July 25, 1995, and all others similarly affected, hereby grieves the refusal of the Administrator and the Board to distinguish between voluntary and involuntary as per contractual Article XXIV and XXV respectively. We maintain that the actions of the Board and Administrator also violate long standing past practices in the Middletown School District as delineated in the letter of August 5, 1994 from Frank D'Alessandro, MTEA Grievance co-chairperson, to Mr. James Moran, District Administrator for Personnel and the letter of August 30, 1994 from MTEA President Diane Swaim to members of the Board. We maintain violations of all relevant articles of the contract as stated in the aforementioned letters and in the statement to the Board (made prior to their vote) by Mr. D'Alessandro at the public meeting of July 25, 1995. We also maintain violations of all relevant Board policies, and State and Federal statutes, including but not limited to Affirmative Action Laws and the Americans with Disabilities Act.

Relief Sought: We seek a rescision of the Board transfer and a return to the status quo ante, the following of the contractual and long standing procedures in the matter of transfers. We seek a Board directive to Mr. Moran that he abide by the contract and long standing past practice in this and all other matters. We seek a written apology

to the staff members involved and a return of all the rights denied them in this matter. We seek damages to the staff members affected and the Association. We seek any other relief an arbitrator may recommend.

On September 13, 1995, Moran conducted a step 3 grievance hearing. The discussion focused on the Board's 1994 decision not to record transfers in Board minutes as voluntary or involuntary. The Board believed that this delineation could hurt an employee's image. The Board did advise the Association that it would be willing to place in an employee's personnel file an indication that the transfer was involuntary. Further, employees would be given an opportunity to meet and discuss the transfer. The Association objected, asserting that the past procedure had been changed.

On October 2, 1995, Moran denied the grievance. He stated that he found nothing indicating that the current Board practice violated the parties' agreement.

The Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 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 courts.

Thus, we cannot consider the merits of the grievance or any of the Board's contractual defenses. We specifically cannot consider whether this grievance was timely, whether a past practice exists, or whether the 1986 grievance settlement was violated.

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 403-404]

The Board argues that rescinding the transfers made on July 25, 1995 and agreeing to distinguish between voluntary and involuntary transfers in the Board minutes are not mandatorily negotiable. Further, the Board asserts that the form and contents of its minutes are not terms and conditions of employment because they do not intimately and directly affect the work and welfare of public employees. The Board also believes that negotiations over the content of Board minutes would significantly interfere with its

prerogative to determine governmental policies. Finally, the Board argues that negotiations over the contents of Board minutes are preempted by the Open Public Meetings Act, N.J.S.A. 10:4-14 and N.J.S.A. 10:4-6.

The Association argues that whether or not to designate transfers as voluntary or involuntary in Board minutes is a negotiable procedure. The Association also asserts that the Open Public Meetings Act does not preempt negotiations because it is silent as to the degree of specificity required in Board minutes.

The Open Public Meetings Act, N.J.S.A. 10:4-1 et seq., permits the public and the press to have advance notice of and the opportunity to attend most meetings, including executive sessions, of public bodies, except where the public interest or individual rights would be jeopardized. N.J.S.A. 10:4-12(b)(4), (7), and (8) provide:

b. A public body may exclude the public only from that portion of a meeting at which the public body discusses:

(4) Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body;

(7) Any pending or anticipated litigation or contract negotiation other than in subsection b(4) herein in which the public body is, or may become a party;

(8) Any matter involving the employment, appointment, termination of employment, terms and

conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matters or matters be discussed at a public meeting.

N.J.S.A. 10:4-14 provides:

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with section 7 of this act.

Negotiations are preempted only if a statute or regulation fixes a term and condition of employment "expressly, specifically, and comprehensively." The statute or regulation must "speak in the imperative and leave nothing to the discretion of the public employer." Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n., 19 N.J. 38 (1982). The Open Public Meetings Act does not require that Board minutes specify whether a transfer is voluntary or involuntary. Keeping "reasonably comprehensible minutes" requires only that minutes indicate what took place at the meeting and what final action was taken. Liebeskind v. Bayonne, 265 N.J. Super. 389 (App. Div. 1993).

The substantive decision to transfer or reassign a teacher is not mandatorily negotiable or legally arbitrable. Ridgefield Park. Thus, the Association may not legally arbitrate the Board's July 1995 transfer decisions.

Procedures for transferring and reassigning employees are mandatorily negotiable. Local 195. Examples of procedural aspects of transfers include notice to an employee about a transfer, meetings with employees to inform them of a transfer, and a requirement that an employer consider an employee's choice related to a transfer as long as the employer is not required to grant the request. Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 95-15, 20 NJPER 334 (¶25175 1994). Also, the requirement that an employer provide a statement of reasons for a personnel action generally concerns a mandatorily negotiable procedural issue. Newark Bd. of Ed., P.E.R.C. No. 86-6, 11 NJPER 450 (¶16157 1985); South River Bd. of Ed., P.E.R.C. No. 83-135, 9 NJPER 274 (¶14126 1983), aff'd 10 NJPER 185 (¶15092 App. Div. 1984).

The Board records transfers and other personnel actions in its minutes. But the Association has not identified the employees' interest in requiring that the minutes, as opposed to an employee's personnel file, specify whether a transfer is voluntary or involuntary. In addition, negotiations over the Board's decision not to record transfers as involuntary or voluntary in its minutes would significantly interfere with the Board's prerogative to determine how to keep its minutes. Moreover, in some cases, a requirement that the reason for a transfer be specified might violate the privacy protections of the Open Public Meetings Act. Therefore, on balance, the employer's interest outweighs the


employees' interest and this issue may not be submitted to binding arbitration.

This holding does not preclude negotiations over procedures that guarantee that the Board be informed of the voluntary or involuntary character of transfers before approving them or that an employee's personnel file accurately reflect the voluntariness or involuntariness of a transfer. We note also that we are not determining the legal arbitrability of a claim that the Board inaccurately characterized the voluntariness of a transfer. Under these facts, the minutes are silent on that issue and the Board has a right to keep them silent.

ORDER

The request of the Middletown Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997