

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GARFIELD BOARD OF EDUCATION,

Petitioner,

-and-

NEW JERSEY STATE FEDERATION OF
TEACHERS, AFT/AFL-CIO,

Respondent,

Docket No. SN-84-101

-and-

RAYMOND HRYCZYK,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission holds that a requirement to supply a department chairperson with a statement of reasons for not reappointing him is mandatorily negotiable and arbitrable. The New Jersey State Federation of Teachers, AFT, AFL-CIO filed a grievance against the Garfield Board of Education which denied that the Board violated its collective negotiations agreement with the New Jersey State Federation of Teachers when it failed to reappoint a department chairperson. An arbitrator found that the Board acted arbitrarily and capriciously because it failed to give any reasons for not reappointing the chairperson. The arbitrator ordered reinstatement. Following the initiation of proceedings to confirm, modify, or vacate this award and a subsequent direction of the Appellate Division of the Superior Court, this matter was transferred to this Commission for a determination of the negotiability and arbitrability of the parties' dispute. The Commission finds that the issue in dispute -- the provision of a statement of reasons for not reappointing the department chairperson, not the merits of the decision not to reappoint -- is mandatorily negotiable and arbitrable. Given the limited nature of its scope of negotiations jurisdiction, the Commission expresses no opinion on the propriety of ordering reinstatement as a remedy for failing to provide a required statement of reasons.

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Appearances:

For the Petitioner, Picinich & Rigolosi, P.C.
(Vincent P. Rigolosi, of Counsel)

For the Respondent, Sauer, Boyle, Dwyer & Canellis, P.C.
(Christopher M. Howard, of Counsel)

For the Intervenor, Segreto & Segreto, Esqs.
(James V. Segreto, of Counsel)

DECISION AND ORDER

On April 26, 1984, the Garfield Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a determination that a grievance filed by the New Jersey State Federation of Teachers, AFT/AFL-CIO ("Federation") could not legally have been submitted to binding arbitration. The grievance alleged that the Board violated its collective negotiations agreement with the Federation when it failed to reappoint Charles Sorce as head of the Social Studies department for the 1982/1983

school year. The arbitrator found that the Board's failure to give Sorce any reason for refusing to reappoint him was arbitrary and capricious. He directed that Sorce be reinstated as department head for the second half of the 1982/1983 school year with back pay for the first half of the school year.

The parties have filed briefs and exhibits.^{1/} The following facts appear.

The Federation is the majority representative of the Board's teaching personnel including department heads. The Board and the Federation entered a collective negotiations agreement effective from July 1, 1980 through June 30, 1983. Article IV(C) of that agreement provides:

No employee shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

The parties' grievance procedure culminates in binding arbitration.

Charles Sorce is a social studies teacher employed by the Board. For many years, including 1981-1982, he served as head of the social studies department in addition to his teaching duties. He was reappointed department chairperson each year pursuant to a one year contract and received a stipend for those duties over and above his teacher's salary.

^{1/} Raymond Hryczyk, the teacher the Board appointed department head in place of Sorce, has intervened in this litigation.

In the spring of 1982, the Board, rejecting the recommendation of Sorce's principal, decided not to reappoint Sorce as department head.^{2/} In Sorce's place, the Board appointed Raymond Hryczyk.

On May 18, 1982, Sorce filed a grievance alleging that the Board lacked just cause to deny him reappointment and thus violated Article IV(C). He sought reappointment for the 1982-1983 school year.

After failing to resolve the dispute at the lower steps of the grievance procedure, the parties submitted the matter to binding arbitration. The parties submitted the following questions to the arbitrator:

Did the Board violate Article IV Paragraph C in its treatment of the grievant? If so, what shall be the remedy?

On October 19, 1982, arbitrator John M. Stochaj issued his Opinion and Award. The arbitrator ruled that the Board violated Article IV(C). He stated:

Whether or not Mr. Sorce was disciplined or reprimanded is not known for the Board simply appointed another individual to the position of Department Head and offered Mr. Sorce no explanation. This failure on the part of the Board, given the contract language, leads the Arbitrator to conclude that the action taken by the Board was arbitrary and capricious. Certainly individuals are entitled to be given some reasons in a case such as this for non-reappointment.

He ordered Sorce's reinstatement as department head beginning with the second half of the 1982-83 school year. He also ordered the Board to pay him the stipend he would have been paid as department head for the 1982-1983 school year.

^{2/} Sorce retained his teaching position.

The Board refused to implement the arbitrator's award. The Federation and Sorce then commenced proceedings in the Law Division of the Superior Court to confirm the award. The Board counterclaimed to vacate the award and Hryczyk intervened. During these proceedings, a question arose concerning the arbitrability of the controversy. The trial judge, apparently expecting the parties to secure a determination from this Commission, declined to either confirm or vacate the award.

The Federation and Sorce then appealed to the Appellate Division of the Superior Court. On March 20, 1984, the Court issued a decision directing the trial court to transfer this case to this Commission for a decision concerning the dispute's arbitrability. The Court stated two special reasons for having the Commission exercise its primary jurisdiction over this scope of negotiations dispute: (1) the remedy of reinstatement may have been an inappropriate penalty for the Board's refusal to state its reasons for not reappointing Sorce; and (2) the arbitrability of the grievance might turn on whether the failure to reappoint Sorce was disciplinary in nature, a question which could not be answered without having the Board's reasons for the change in the record.^{3/}

On April 24, 1984, the Honorable Harvey R. Smith, J.S.C. transferred this matter to the Commission to determine the arbitrability of the controversy. The Court retained jurisdiction

^{3/} The Court suggested that we might determine why the change was made and then determine arbitrability.

over the proceedings to confirm or vacate the award pending this determination.^{4/}

The Board argues that it has a non-negotiable managerial prerogative to replace department heads with or without cause and that the instant just cause provision illegally grants department chairpersons tenure.^{5/} The Board further argues that its prerogative to replace department heads without cause encompasses a right to refuse to give reasons for such decisions.^{6/}

The Federation asserts that Sorce simply wanted to know the reasons he was not reappointed after serving several years as department head and receiving continued favorable recommendations from his supervisors. It states, in part:

Article IV, Paragraph C provides to employees within the school district of Garfield a form of rudimentary, although quite nominal, procedural due process protection.

^{4/} The Commission has held that it will not process scope of negotiations petitions filed after arbitration proceedings unless proceedings to vacate, modify, or confirm an award have been initiated in the Superior Court and the Court, as here, has transferred the matter to the Commission for determination. In re Ocean Twp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983).

^{5/} The intervenor joins in these arguments.

^{6/} The Commission, adopting the Appellate Division's suggestion, asked the Board to submit its reasons for the change in writing. The Board responded by asserting that the reasons were irrelevant in light of its claimed prerogative to replace department heads without giving any reason. Notwithstanding this position, the Board -- which now has only five of the nine members who changed department heads in 1982 -- asserts that it believed Hryczyk would better serve the school system as department head. That conclusion was based on a subjective evaluation by each of the nine members who made the appointment. Each member considered recommendations and information concerning the applicants' teaching performance and their ability to get along with and obtain productivity from other teachers in the department.

The Petitioner seems to view the grievance as an attempt to preclude the right of the Board to deploy its personnel. Again, this view of Petitioner's greatly enlarges the scope of the grievance. The grievance merely seeks a reason as to why Mr. Sorce was not reappointed. The fact that the Board did not reappoint him has not been challenged by Mr. Sorce. Nor is he challenging the qualifications and credentials of Mr. Hryczyk. Nor is Mr. Sorce claiming tenure to the former position. All he wanted to know was why and the Board chose to completely ignore Mr. Sorce's repeated inquiries and remain silent. It was this conduct that Mr. Sorce found offensive and thus, he commenced his grievance.

It concludes, therefore, that this case only concerns the mandatorily negotiable issue of whether Sorce was entitled to a statement of reasons for not being reappointed.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Thus, in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975) stated:

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, in the instant case, we do not consider the merits of the arbitration award. Further, given the Federation's position,

it is not necessary to address the arbitrability of any issue other than whether the Board was obligated to give Sorce a statement of reasons concerning its refusal to reappoint him.^{7/}

In Local 195, IFPTE v. State, 88 N.J. 393 (1982)

("Local 195"), the Court set forth the following three tests 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.

^{7/} In effect, we are assuming that the Board does have a non-negotiable managerial prerogative not to reappoint department chairpersons and that an arbitrator may not render a binding determination on whether the reasons it proffers for such a decision are reasonable. Compare In re New Milford Bd. of Ed., P.E.R.C.No. 79-78, 5 NJPER 192 (¶10109 1979) (claim that refusal to reappoint department chairperson was arbitrary and capricious cannot be arbitrated) with In re Penns Grove-Carneys Point Bd. of Ed., P.E.R.C. No. 81-144, 7 NJPER 356 (¶12160 1981) (grievance challenging refusal to reappoint teacher is non-arbitrable in absence of indication that refusal constituted discipline). Given these assumptions, we review only the limited and different question of whether a board of education may legally obligate itself to explain to an affected employee its decision not to reappoint that employee to the position of department head. We specifically need not decide, in the absence of any allegations that the refusal to reappoint Sorce constituted discipline, whether that decision was arbitrable under the amendment to N.J.S.A. 34:13A-5.3 concerning disciplinary review procedures.

Applying these tests, we conclude that the provision of a statement of reasons to a department head who is not reappointed is a mandatorily negotiable subject.

There is no contention in the instant case that any statute or regulation specifically prohibits or requires the provision of a statement of reasons when a board of education refuses to reappoint a department head. We are aware of no such statute or regulation. Accordingly, negotiations concerning the provision of a statement of reasons for non-reappointment is not preempted.

We now consider whether negotiations over the provision of a statement of reasons would directly and intimately affect the work and welfare of school board employees and whether such provision would significantly interfere with a school board's ability to determine governmental policy. Under Donaldson v. North Wildwood Bd. of Ed., 65 N.J. 236 (1974) ("Donaldson"), it is clear that the provision of a statement of reasons does intimately and directly affect employees and does not interfere with school board policy.

In Donaldson, the board of education decided not to renew a non-tenured teacher's contract. Although the teacher persistently sought the reasons for this decision from the superintendent and board, she was not told why. The Court held, as a matter of law, that all non-tenured teachers are entitled to a statement of reasons when they are not rehired. The Court

carefully balanced the interests of employees in receiving a statement of reasons against the interests of boards in not providing reasons, id. at 245-246, and concluded that elemental fairness and justice warranted a statement of reasons and that the burden on the boards would be purely administrative and minimal.^{8/} At the end of its opinion, the Court observed that many boards had already negotiated contracts requiring them to furnish a statement of reasons for denying reappointments and stated that henceforth its opinion would mandate such statements.

We need not decide whether Donaldson strictly applies when a teacher is not reappointed to a non-tenurable or extra-curricular position. It suffices to say, for purposes of this case, that the provision of a statement of reasons is clearly negotiable and enforceable under Donaldson, even if not required. We so hold. See also N.J. State College Locals v. State Bd. of Higher Ed., 91 N.J. 18 (1982) (citing Donaldson, Court holds that procedures relating to rehiring, including notice and rudimentary due process, are mandatorily negotiable); Local 195 (procedures for promotions, transfers, and reassignments are mandatorily negotiable); In re Plainfield Bd. of Ed., P.E.R.C. No. 84-134, 10 NJPER 346 (¶15159 1984) (grievance alleging failure to consult

^{8/} The Court distinguished between the procedural issue of whether a statement of reasons should be required and a substantive attack on a decision not to reappoint a teacher. We make the same distinction in the instant case. For the reasons stated in n. 7, we are only considering the arbitrability of the Federation's claim that Sorce did not receive procedural justice, not a claim that the denial of his reappointment was substantively unjust.

with guidance department head before transferring him to guidance counselor is arbitrable).^{9/}

Given our conclusion that the failure to provide a statement of reasons presented an arbitrable issue, the next question is whether reinstatement is a permissible remedy for a refusal to give reasons. The Superior Court, in ordering the transfer of this case to us, questioned the propriety of that remedy:

Firstly we note the remedy granted by the arbitrator. He did not simply require that the Board state what "just cause," if any, it had for its failure to re-appoint Sorce. Instead by directing Sorce's appointment he made a decision ordinarily of a managerial nature. We question whether the parties may agree on a grievance procedure authorizing such relief. Cf. Township of Old Bridge Bd. of Ed. v. Old Bridge Ed. Ass'n, [193 N.J. Super. 182 (App. Div. 1984)] (a procedural violation of a contractual right should not give rise to impermissible substantive relief infringing on the employer's managerial prerogatives). Slip opinion at 5-6.

In Old Bridge, a tenured part-time business education teacher filed a grievance claiming the board failed to afford adequate notice that she would not be employed the next year as a result of a reduction in force. Following an arbitrator's opinion that the board violated its contractual notice obligations,

^{9/} The Board's reliance on Board of Education, Twp. of Wyckoff v. Wyckoff Ed. Ass'n, 168 N.J. Super. 497 (App. Div. 1979) is misplaced. There, the Court found that a substantive attack on the failure to reappoint two non-tenured teachers was non-arbitrable. That issue, for the reasons stated in n. 7, is not before us. The Wyckoff court distinguished a claim, similar to the one here, alleging a denial of due process and specifically noted that the board told the teachers the reasons for not reappointing them.

but before the arbitrator rendered an award concerning the appropriate remedy, the board filed a scope petition with us. We found the notice issue to be negotiable and arbitrable, but stated that an arbitrator could not reinstate the teacher given the board's managerial and statutory prerogative to reduce its teaching staff. We declined to speculate on what remedies short of reinstatement might be appropriate.

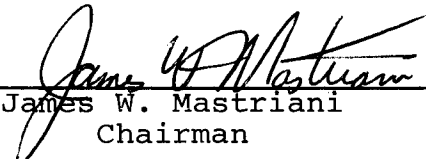
The Board appealed our decision. While the appeal was pending, the arbitrator ordered the board to pay the teacher a full year's salary together with fringe benefits. The Court then affirmed our negotiability and arbitrability determination, but exercised its original jurisdiction to vacate the arbitration award. The Court held that the arbitrator's award was excessive because it was not tied to the adverse effect upon an employee of receiving late notice, but was instead tied to the adverse effect upon the employee of the termination of her employment. Accordingly, the Court sent the case back to the arbitrator for the issuance of a new award based on whatever economic harm the teacher may have suffered by reason of the two month delay in receiving notice.^{10/}

We agree with the Appellate Division that a question exists concerning the propriety under Old Bridge of the instant

^{10/} The Board has appealed the Old Bridge decision to the New Jersey Supreme Court and has claimed that the issue of notice is entirely non-arbitrable. Sup. Ct. Dkt. No. 22,353. The Association has petitioned for, and the Supreme Court has granted, certification of its claim that the entire arbitration award should be confirmed.

arbitration award, given the nature of the claim presented and violation found. We do not believe, however, that our scope of negotiations jurisdiction extends beyond finding that a dispute in the abstract is legally negotiable and arbitrable in the first instance. The abstract negotiability of a subject matter under Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978) presents an issue different from the propriety of any particular arbitration award under Kearny PBA Local #21 v. Town of Kearny, 81 N.J. 208 (1979) ("Kearny"). The former issue is for this Commission to decide; the latter issue is for the courts. The Old Bridge Court recognized precisely this distinction when it affirmed our abstract scope of negotiations determination, but exercised its original jurisdiction to find the particular arbitration award before it excessive. Accordingly, having found that the instant grievance presented an arbitrable issue in the abstract, we will transfer this case back to the Law Division of the Superior Court for consideration of the arbitration award's propriety under Kearny and Old Bridge. Since the Superior Court has retained jurisdiction to confirm, modify or vacate the arbitration award, we will issue no order.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioners Graves and Newbaker abstained.

DATED: Trenton, New Jersey
November 1, 1984
ISSUED: November 2, 1984