

P.E.R.C. NO. 92-113

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LACEY TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-40

LACEY TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Lacey Township Education Association against the Lacey Township Board of Education. The grievance asserts that a teacher has been improperly placed on the salary guide. The Commission reaffirms that an initial placement on a salary guide is a mandatorily negotiable subject.

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Appearances:

For the Petitioner, Arthur Stein & Associates, attorneys
(David A. Semanchik, of counsel)

For the Respondent, Klausner, Hunter & Cige, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On October 8, 1991, the Lacey Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Lacey Township Education Association on behalf of a teaching staff member. The grievance asserts that the teacher has been improperly placed on the salary guide.

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

The Association represents the Board's full-time, non-supervisory employees including teachers. The Board and the Association are parties to a collective negotiations agreement

effective from July 1, 1988 until June 30, 1991. Binding arbitration is the grievance procedure's terminal step for resolving disputes concerning the agreement.

Lillian Cascamo, a tenured teaching staff member, was first hired to serve in a full-time capacity for the 1987-88 school year after having served as a long-term substitute teacher within the district. Cascamo asserts that prior to the start of the 1987-88 school year, she had been advised by the Board's agents and representatives that a recommendation would be made that she receive full experiential credit for previous out-of-district teaching experience. That experience included nine years of teaching business courses at the Taylor Business Institute part time and eight years of teaching business courses at the high school, summer school and adult school levels.

Article VII, Section C of the agreement reads:

Credit up to the eleventh level of the Teacher Salary Guide may be given for previous outside teaching experience in a duly accredited school upon initial employment....

The Board did not grant Cascamo credit for her nine years at Taylor and placed her at level two of the salary guide. During the next few years, Cascamo and Association representatives discussed her salary schedule placement with Board representatives. On June 12, 1990, the assistant superintendent advised Cascamo that the Board had decided it could not give credit for previous experience at an institute other than a parochial or accredited public school.

A Petition of Appeal was filed with the Commissioner of Education on September 12, 1990 and was subsequently dismissed on October 5, 1990. The Commissioner's letter decision states that salary placement is a term and condition of employment governed by the Board-Association agreement and is outside his jurisdiction. The letter then states that her petition, even if it had raised a matter within the Commissioner's jurisdiction, did not appear to be timely filed. On November 5, 1990 Cascamo filed a Notice of Appeal with the State Board of Education which, on February 6, 1991, affirmed the Commissioner's decision.

On March 19, 1991, a grievance was filed at Level II of the negotiated procedure. On August 14, the Board held a hearing on the grievance and determined that Cascamo was not entitled to the salary placement she sought. On September 6, the Association demanded arbitration. This petition ensued.

Our scope of negotiations jurisdiction is narrow:

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. [Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), quoting Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975)]

Thus we do not determine whether the grievance is timely filed or whether Cascamo's claim for credit is meritorious.

N.J.S.A. 18A:29-9 provides:

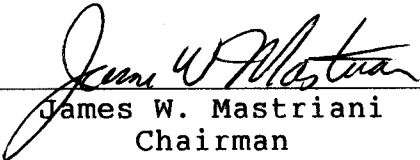
Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, his initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing board of education.

Construing this statute, the Courts and this Commission have found that initial placement on a salary guide is a mandatorily negotiable subject and a dispute over salary placement which arises under a negotiated agreement is legally arbitrable. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Stanhope Bd. of Ed., P.E.R.C. No. 90-81, 16 NJPER 178 (¶21076 1990); Fairview Bd. of Ed., P.E.R.C. No. 84-59, 10 NJPER 10 (¶15006 1983); Eastern Camden Bd. of Ed., P.E.R.C. No. 80-158, 6 NJPER 348 (¶11174 1980); Dennis Tp. Bd. of Ed., P.E.R.C. No. 80-157, 6 NJPER 334 (¶11167 1980); cf. Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990), aff'd App. Div. Dkt. No. A-229-90T3 (4/8/92). Under these cases, the parties may legally arbitrate whether the Board is contractually required to credit a teacher's experience at other than a public or parochial school for purposes of salary guide placement. This dispute is legally arbitrable.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Smith voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioners Regan and Wenzler were not present.

DATED: April 28, 1992
Trenton, New Jersey
ISSUED: April 29, 1992