

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF THE
CITY OF BRIDGETON,

Petitioner,

Docket No. SN-78-7

-and-

BRIDGETON EDUCATION ASSOCIATION,
Respondent.

SYNOPSIS

The Chairman, acting on behalf of the entire Commission, issues an Interlocutory Decision denying the Board's request for an order restraining arbitration during the pendency of a scope of negotiations proceeding. The disputed issue relates to the negotiability and arbitrability of statements contained within a total performance evaluation of a tenured teacher employed by the Board of Education. The Chairman notes that the Commission has taken the position that the scope of negotiations was expanded by the Chapter 123 amendments, that matters previously classified as managerial prerogatives are now permissively negotiable, and that the amendment which provides that grievance procedures "shall be utilized" contained in Section 5.3 of the Act was designed to permit the arbitration of any dispute covered by the terms of a collective negotiations agreement. The Chairman also notes that in scope of negotiations matters the Commission merely addresses the abstract issue as to whether or not the subject matter in dispute is within the scope of collective negotiations. The Chairman therefore concludes that inasmuch as the matter at issue relates to a permissive subject for collective negotiations, this matter is arbitrable, if otherwise arbitrable, under the parties' agreement.

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Appearances:

For the Petitioner, Casrow, Casrow & Kienczle, Esqs.
(A. Paul Kienczle, of Counsel)

For the Respondent, Tomar, Parks, Seliger, Siminoff
and Adourian, Esqs.
(Mary Crangle, of Counsel)

INTERLOCUTORY DECISION

On September 22, 1977 the Board of Education of the City of Bridgeton (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Bridgeton Education Association (the "Association") are within the scope of collective negotiations. The Petition for Scope of Negotiations Determination has attached to it a verified complaint and several attachments including excerpts from the collective negotiations agreement between the parties which covers the term July 1, 1976 through June 30, 1979 and a "Total Performance Evaluation" of the grievant, Mr. Michael McHugh. Additionally, the Board submitted a copy of an Order dated September 22, 1977 issued by Philip A. Gruccio, J.S.C. That Order

directs the above-named parties to proceed immediately before PERC and it further provides that the Court retains jurisdiction over any collateral issue or issues which the Commission determines are not within its immediate jurisdiction.

The dispute relates to an evaluation received by Michael McHugh. In a letter dated May 17, 1977 to the Superintendent of Schools from Charles Peraset and Michael McHugh, a statement of the grievance, the nature of the violations, and the resolution were set forth. According to this letter, Mr. McHugh considers several statements contained in the evaluation to be unacceptable. These statements follow:

- "A. Is generally prepared for classroom teaching duties and assumes responsibilities as requested, but does little beyond minimum requirements.
- B. Observed on several occasions setting (sic) on desk in a position that does not present a good professional teacher image."

In accordance with the provisions of Judge Gruccio's Order, both parties appeared before the undersigned in the Commission's office in Trenton on this date. The undersigned has examined the Petition for Scope of Negotiations Determination and the Verified Complaint with attachments. The Commission has delegated to the undersigned the authority to conduct show cause proceedings on the Board's request and to issue an interlocutory determination on behalf of the Commission. This Interlocutory Decision constitutes a determination as to whether the facts of this case warrant the exercise of the discretion which the Commission possesses to restrain arbitration in appropriate circumstances.

As a preliminary statement it should be understood that in a scope of negotiations proceeding such as the instant matter, the undersigned in an interim proceeding and the Commission in its final disposition of the merits is analyzing the abstract issue as to whether or not the subject matter in dispute is within the scope of collective negotiations. As the Commission said in In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975):

"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." (footnotes omitted)

Therefore, the undersigned has not considered those aspects of the Verified Complaint which relate to any claims of the Board that this matter is not one that the parties have agreed, by the terms of their collective negotiations agreement, to submit to arbitration.

The essence of the position of the Board is that the issue in dispute is a managerial prerogative and as such is neither negotiable nor arbitrable. The Board cites the recent decision of the Appellate Division involving Byram Township Board of Education,^{1/} in support of its contention that the scope of negotiations and

^{1/} In the Matter of Byram Township Board of Education and Byram Township Education Association, Appellate Division Docket No. A-3402-75 (Decided June 16, 1977).

arbitration have not been expanded as a result of the amendments to the Act, Chapter 123, P.L. 1974, and that the Supreme Court's analysis set forth in the Dunellen Trilogy^{2/} of cases is still viable.

The Commission has consistently taken the position that matters involving either mandatory or permissive subjects of negotiations may be submitted to arbitration, assuming those matters to be covered by the terms of the collective negotiations agreement.^{3/} When confronted with a similar issue in In re New Milford Board of Education, P.E.R.C. No. 77-25, 2 NJPER 353 (1976), the Commission did conclude that a dispute relating to the "willingness to extend oneself professionally" could not be submitted to arbitration. However, that dispute arose under the terms of a Chapter 303 agreement.

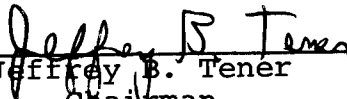
The Commission has taken the position that the scope of negotiations was expanded by the Chapter 123 amendments, that matters previously classified as managerial prerogatives are now permissively negotiable, and that the amendment which provides that grievance procedures "shall be utilized" contained in Section 5.3 of the Employer-Employee Relations Act was designed to permit the arbitration of any dispute covered by the terms of a collective negotiated agreement.

^{2/} Dunellen Bd. of Ed. and Dunellen Education Assn., 64 N.J. 17 (1973); Bd. of Ed. of Englewood and Englewood Teachers Assn., 64 N.J. 73 (1973); Burlington Ct. Coll. Fac. Assoc. v. Bd. of Trustees, 64 N.J. 10 (1973).

^{3/} In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976).

Based upon the above, the undersigned concludes that the matters in dispute are permissively negotiable and may be submitted to arbitration, if otherwise arbitrable, under the terms of the parties' agreement. Therefore, the request of the Board for a temporary restraint of arbitration must be and is hereby denied.

BY ORDER OF THE CHAIRMAN



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
September 22, 1977