

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONROE TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

Docket No. SN-80-73

-and-

MONROE TOWNSHIP FEDERATION OF
TEACHERS,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission, in reliance on previous decisions, concludes that the Board's decision to reassign a teacher is a managerial prerogative beyond the scope of negotiations and arbitration. However, the Commission further concludes that an alleged violation of the contractual procedures for reassigning teachers is an arbitrable issue. Accordingly, the Board's request for a permanent restraint of arbitration is partially denied and the Federation may proceed to arbitration limited to the latter issue.

P.E.R.C. NO. 80-146

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Respondent.

Appearances:

For the Petitioner, Hannold, Caulfield, Marshall
and McDonnell, P.A.
(Mr. Martin F. Caulfield, of Counsel)

For the Respondent, Sauer, Boyle, Dwyer,
Canellis & Cambria, Esqs.
(Mr. William A. Cambria, of Counsel)

DECISION AND ORDER

On January 21, 1980 the Monroe Township Board of Education (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 Monroe Township Federation of Teachers (the "Federation") are within the scope of collective negotiations. The instant dispute arose with respect to certain matters which the Federation seeks to submit to binding arbitration under the parties' contractual grievance procedure. The Board has objected to arbitration on the basis that the issues in dispute are neither negotiable nor arbitrable.

The relevant contractual provision follows:

5:3 Assignments

5:3.1 In the determination of assignments, the convenience and wishes of the individual teacher will be honored to the extent that those considerations do not conflict with the instruction requirements and the best interests of the school system and the students. Consideration shall be given to a teacher's area of competence, major and minor field of study, quality of teaching performance and attendance record. Seniority shall prevail when the administration determines that the teachers are equally qualified. An involuntary assignment shall be made only after a meeting between the teacher involved, and Superintendent and the principal or principals of the school involved, at which time the teacher shall be notified of the assignment.

5:3.2 The Board agrees that teachers shall receive their building and class assignments for the next school year prior to the last day of school. Changes required after that date will be mailed to their file addresses.

The parties agree that on June 11, 1979, Lori L. Chewkanes, a fifth grade teacher, received her class assignments for the 1979-80 school year. However, on July 26, 1979, Ms. Chewkanes was notified that while she would still be teaching the same grade in the same school, her roster of students would be different because the teaching teams had been realigned to best utilize a new teacher. Ms. Chewkanes filed a grievance which alleged that her class assignments had been arbitrarily changed. The grievance demanded reinstatement of her original teaching core and class assignment. This grievance was denied by the Board and the Federation filed a demand for arbitration. The Board then filed the instant scope of negotiations petition with a request that the arbitration be permanently enjoined.

The Board and Federation filed briefs on January 21, 1980 and February 15, 1980, respectively. The Board contends that, under the decision in Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn, 78 N.J. 144 (1978), teacher reassignment is a significant matter of governmental policy which is neither negotiable nor arbitrable. Therefore, any contractual provision which limits management's authority in this regard is unenforceable.

The Federation concedes that the arbitrator cannot order rescission of the assignment. However, it contends that there are additional issues within this grievance which are arbitrable. These issues are: (1) whether the reassignment was in reprisal for Ms. Chewkanes' participation in a prior grievance; and (2) whether the Board violated the provisions of Article 5:3.1 by not meeting with Ms. Chewkanes prior to her involuntary transfer. The Federation, citing numerous prior Commission and Court decisions, argues that procedural provisions such as notice and an opportunity to be heard as well as non-discrimination provisions are negotiable and arbitrable under the pertinent Supreme Court decisions because they do not significantly interfere with the exercise of managerial prerogatives. While substantive decisions are non-negotiable management prerogatives, the Federation contends that the procedural aspects of these decisions are negotiable. It is also noted by the Federation that prior to arbitration the Commission will not speculate on the propriety of various possible arbitration awards. In re Fairview Board of Ed, P.E.R.C. No. 80-14, 5 NJPER 347 (¶10182 1979).

It is clear that, under the decision in Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn, supra, teacher assignments and transfers are managerial prerogatives beyond the scope of negotiations. Also, see In re State of New Jersey, P.E.R.C. No. 80-19, 5 NJPER 381 (¶10194 1979), appeal pending App. Div. Docket No. A-463-79 and A-409-79. Since the establishment of criteria for determining assignments is an integral aspect of this managerial decision, the first three sentences of Article 5:3.1 are unenforceable through binding arbitration because they relate to the actual decision to assign teachers. Accordingly, the Federation cannot submit to arbitration the question of whether the Board's reassignment of Ms. Chewkanes was in accordance with this portion of Article 5:3.1.^{1/}

Consistent with pertinent Commission and judicial precedent, the Commission concludes that procedural provisions - e.g. prior notice and an opportunity to be heard - relating to the Board's decision to reassign teachers are mandatorily negotiable and hence arbitrable. In re State of New Jersey, supra; cf. Montclair Board of Education, P.E.R.C. No. 79-73, 5 NJPER 187 (¶10104 1979); In re Borough of Fair Lawn Board of Education,

^{1/} Under the decisions in Township of West Windsor v. PERC, 78 N.J. 98 (1978) and Bd of Ed, Bernards Twp. v. Bernards Twp. Ed Assn, 79 N.J. 311 (1979), only grievances involving terms and conditions of employment can be submitted to binding arbitration. This is not to say that the inclusion of these sentences in the agreement was itself improper. Pursuant to the Bernards Twp. decision Id., it would appear that the parties could agree to present disputes concerning the assignments as grievances under a negotiated grievance procedure provided the procedure for such grievances did not go beyond advisory arbitration. Id. at 326-327.

P.E.R.C. No. 79-88, 5 NJPER 225 (¶10124 1979), appeal pending App. Div. Docket No. A-3993-78; In re Fairview Board of Ed, P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979); Bd of Ed Twp. of No. Bergen v. No. Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976); and State v. State Supervisory Employees Assn, 78 N.J. 54 (1978). Accordingly, Article 5:3.2 and the last sentence of Article 5:3.1, which appears to provide that the superintendent and school principal(s) involved will meet with a teacher prior to an involuntary assignment, pertain to terms and conditions of employment. The Federation can submit to arbitration the question of whether the Board's representatives failed to meet with Ms. Chewkanes prior to her reassignment.^{2/}

In its brief, the Federation asserted that the Board's decision to reassign Ms. Chewkanes was a reprisal against her because of her participation in a prior grievance. This issue was not raised by the Board in its scope petition nor does the Board's brief address the negotiability of this issue. The Federation correctly notes that such claims might support an independent unfair practice charge. It is also true, as argued by the Federation, that we have held non-discrimination clauses to be mandatorily negotiable and enforceable. See In re Fairview

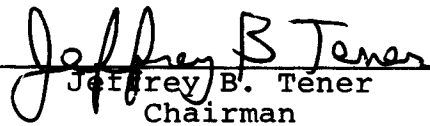
^{2/} In our Fairview decision, P.E.R.C. No. 80-18, supra, we indicated that the parties could not negotiate a procedure which would bar an employer from effectuating a transfer or an assignment until a meeting had taken place as this would "...be an intrusion on the board's ability to make changes." at 380. This decision is consistent with that decision because the Board has already made the assignment. That statement was not intended to exclude from negotiations prior notice or meeting requirements where reasonably possible. Such notice and opportunity to discuss is a term and condition of employment. However, as the Association in this case concedes, the failure to comply with that procedure may not authorize rescission of a transfer which was based upon educational policy judgments.

Board of Education, P.E.R.C. No. 79-34, 5 NJPER 28 (¶10019 1979). But we do not believe that Article 5:3, Assignments, quoted above, can reasonably be read to constitute a non-discrimination clause nor has the Board contested the negotiability of a non-discrimination clause. Accordingly, the cited clause cannot be used as a vehicle to obtain arbitration of this claim of the Federation.

ORDER

For the aforementioned reasons, IT IS HEREBY ORDERED that the Monroe Township Federation of Teachers may submit to arbitration the question of whether the Board violated the last sentence of Article 5:3.1 which requires that its representatives meet with a teacher prior to an involuntary assignment.^{3/} The request of the Board for a permanent restraint of arbitration is hereby denied in regard to that issue. However, the Federation is permanently restrained from arbitrating or seeking to arbitrate the propriety of the Board's decision to transfer Ms. Chewkanes, i.e. whether the Board violated the first three sentences of Article 5:3.1.

BY ORDER OF THE COMMISSION


 Jeffrey B. Tener
 Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioners Graves, Hipp & Newbaker were not present. None opposed.

DATED: Trenton, New Jersey
 May 20, 1980
 ISSUED: May 22, 1980

^{3/} Again, it is noted that the Federation acknowledges that the arbitrator cannot order the rescission of the assignment.