

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-30

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board of Education, the Commission determines that the matters in dispute, i.e. the transfer and the reassignment of teaching personnel by the Board of Education, are permissive subjects of collective negotiations and are arbitrable if otherwise arbitrable under the parties' agreement, such agreement having been entered into after the effective date of Chapter 123 of the Public Laws of 1974. The Board's request for a permanent restraint of arbitration concerning these matters was therefore dismissed. The Commission reiterated its position that it was the legislative intent, in part, in enacting Chapter 123, and more specifically the amendments to § 8.1, to enlarge the jurisdiction of the grievance/arbitration process to be co-extensive with the scope of those matters which could be negotiated and incorporated into a collectively negotiated agreement. This would therefore include both mandatory and permissive subjects of collective negotiations.

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Appearances:

For the Petitioner, Pachman & Aron, Esqs.
(Mr. John T. Barbour, of Counsel)

For the Respondent, Goldberg, Simon & Selikoff, Esqs.
(Mr. Theodore S. Simon, of Counsel; Louis P. Bucceri,
on the Brief)

DECISION AND ORDER

On March 2, 1977 the Ridgefield Park Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute between the Board and the Ridgefield Park Education Association (the "Association") were within the scope of collective negotiations.^{1/}

^{1/} The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations appears at N.J.S.A. 34:13A-5.4(d): "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

The dispute initially arose as a series of grievances filed by the Association on behalf of science teachers at the Ridgefield Park High School pursuant to the grievance arbitration provisions in the parties' collective negotiations agreement.

The several grievances concerned the Board's (1) involuntary transfer of certain teaching personnel, (2) reassignment of certain teaching personnel, and (3) refusal of requests for voluntary transfers of certain teaching personnel, all of which actions the Association alleged were violative of the parties' collective negotiations agreement. The grievances were processed through the grievance/arbitration procedure contained in the parties' agreement and said grievances all were denied by the Board. The Association sought to have these matters determined by an arbitrator pursuant to the binding arbitration step in the parties' collectively negotiated grievance procedure.

The Board seeks to prevent the arbitration of these grievances, contending that the matters raised are outside the scope of negotiations. Accordingly, the Board filed this petition and also requested that arbitration be restrained during the pendency of the scope proceeding.^{2/} The Special Assistant to the Chairman,

^{2/} The parties to the above-captioned matter are currently involved in a related litigation before the courts. After the Board refused to submit grievances concerning teacher transfers to binding arbitration, the Association filed a Verified Complaint seeking an Order from the Chancery Division of Superior Court to compel the Board to submit these matters to binding arbitration.

(Continued)

acting on behalf of the Commission,^{3/} issued an Interlocutory Decision dated April 5, 1977 denying the requested stay of arbitration.^{4/} In view of previous Commission scope of negotiations determinations upon matters highly similar to those disputed herein, the Special Assistant to the Chairman concluded that the issues in dispute would be found to be permissive subjects of negotiations and therefore could be submitted to arbitration if otherwise arbitrable under the parties' agreement. The Board, of course, disagrees and still maintains that the matter is outside the scope of collective negotiations and is, therefor, non-arbitrable.

In its brief, the Board sets forth familiar arguments concerning the negotiability of the disputed matters. The Board argues that the matters in dispute herein -- the transfer and re-assignment of teaching personnel by a board of education -- are major educational policy issues. It is contended that such matters are managerial prerogatives and are outside the scope of collective

^{2/} (Continued)

The Chancery Division ordered the Board to proceed with arbitration. Thereupon, the Board filed an appeal from the Chancery Division decision in the Appellate Division of Superior Court and sought a stay of the Chancery Division Order. On July 7, 1977, the Appellate Division issued a Stay of Arbitration pending appeal. On July 27, 1977, the Association appealed to the Supreme Court to vacate the Interlocutory Stay issued by the Appellate Division, and in the alternative, the Association requested direct certification by the Supreme Court. Should certification be granted, the Association has requested consolidation of its appeal concerning Ridgefield Park Education Assn. v. Ridgefield Park Board of Education with Englewood Teachers' Assn. v. Englewood Board of Education, Supreme Court Docket No. 13,367.

^{3/} See N.J.A.C. 19:13-3.10

^{4/} In re Ridgefield Park Board of Education, P.E.R.C. No. 77-45, NJPER (1977).

negotiations. Because they are outside the scope of collective negotiations, the Board maintains that such matters are non-negotiable and hence non-arbitrable.

The Board argues that Chapter 123, Public Laws of 1974, did not change the principles of negotiability set forth in Chapter 303, Public Laws of 1968, as interpreted by the New Jersey Supreme Court in Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973). The Board contends that Chapter 123, Public Laws of 1974, should not be interpreted as making all matters covered by other statutes dealing with terms and conditions of employment, except matters covered by pension statutes, negotiable. Rather, the Board suggests that the correct interpretation of N.J.S.A. 34:13A-8.1, as amended, is that the Commission may now determine whether or not a matter in dispute is within the scope of collective negotiations, with the caveat that in no instance may the Commission find that matters covered by a pension statute are within the scope of collective negotiations.

The Board also suggests that the Commission abandon its classification of items as being permissively negotiable, and determine that anything which is not a mandatory subject for negotiations is thereby a managerial prerogative specifically delegated by the Legislature to school boards and hence is not legally negotiable.

The Board notes that local boards of education have been vested with certain broad grants of authority concerning the employment, promotion, transfer and dismissal of employees, pursuant

to various sections of the Public School Education Act of 1975 (an Act which implemented Article 8, Section 4, Paragraph 1 of the New Jersey Constitution of 1947 that provides that the Legislature must provide for the maintenance and support of a "thorough and efficient" system of free public education). It is contended that the cited grants of authority were made to local boards of education to assist with their efforts to implement a "thorough and efficient" system of free public education. Accordingly, the Board contends that because the transfer of teaching personnel is a matter which the Legislature has thus expressly delegated to local boards of education and which is within their sole managerial discretion, it is non-negotiable and hence non-arbitrable.

The Association states that the issue for decision herein is whether or not the transfer of teaching personnel is an illegal subject of negotiations. The Association, citing several previous Commission decisions, argues that once an item is found to be permissively negotiable, it is arbitrable if otherwise arbitrable under the parties' agreement. The Association contends the matters disputed herein are permissively negotiable and hence arbitrable. The Association suggests that the Legislature enacted Chapter 123, Public Laws of 1974, to establish the primacy of arbitration as a means of dispute resolution. The Association further argues that the Constitutional mandate to provide a "thorough and efficient" education will not be impaired if the matters herein disputed are determined to be negotiable.

In the case, In re Bridgewater-Raritan Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976), the Commission stated that it was the legislative intent, in part, in enacting Chapter 123,

Public Laws of 1974, and more specifically the amendments to Section 8.1, to enlarge the jurisdiction of the grievance/arbitration process to be co-extensive with the scope of those matters which could be negotiated and incorporated into a collectively negotiated agreement. This would include both mandatory and permissive subjects of collective negotiations.

Prior to the passage of Chapter 123, Public Laws of 1974, arbitration of disputes between a board of education and its employees in New Jersey was limited to items which were not predominantly educational policy issues and which directly affected the financial and personal welfare of the employees. The New Jersey Supreme Court, in a series of decisions known as the Dunellen Trilogy,^{5/} interpreted Chapter 303, Public Laws of 1968, as restricting the arbitration of disputes under Chapter 303 contracts to matters which the court determined were mandatorily negotiable terms and conditions of employment. The courts generally included within this latter category of arbitrable subjects disputes arising from alleged alterations of terms and conditions of employment caused by the implementation of non-arbitrable managerial decisions.^{6/} However, they often refused to permit arbitration of

^{5/} Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); The Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973); Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973).

^{6/} See for example The Board of Education of the City of Englewood v. Englewood Teachers Association, supra; Red Bank Board of Education v. Warrington, 138 N.J. Super 564 (App. Div. 1976); Board of Education of West Orange v. West Orange Education Association, 128 N.J. Super 281 (Ch. Div. 1974). See also, In re Piscataway Township Board of Education, P.E.R.C. No. 77-20, 2 NJPER (1976); In re Board of Education of the Borough of Tenafly, P.E.R.C. No. 76-24, 2 NJPER 75 (1976).

those matters which this Commission has frequently categorized as permissive subjects for negotiations.

Chapter 123, Public Laws of 1974, was approved on October 21, 1974, to take effect 90 days later,^{7/} and was passed in response to certain of the matters raised by the Supreme Court in the Dunellen Trilogy. In Bridgewater-Raritan, supra, the Commission stated its determination that Chapter 123, Public Laws of 1974, made two important changes in the Act which would appear to reverse that part of the Dunellen holding which prohibited the arbitration of contract disputes relating to subjects normally in management's discretion.

The Commission has interpreted the amendments to N.J.S.A. 34:13A-8.1 as signifying a legislative reaction to the restrictiveness of the standards enunciated by the New Jersey Supreme Court in Dunellen with reference to the scope of collective negotiations as well as arbitration.^{8/} The Commission observed that Section 6 of Chapter 123 amended N.J.S.A. 34:13A-8.1, the section which was the nucleus of the court's Dunellen rationale. Prior to the passage of Chapter 123, the New Jersey Supreme Court interpreted N.J.S.A. 34:13A-8.1 as it had been enacted by Chapter 303, Public Laws of 1968 -- specifically, that no provision of the Act shall "annul or modify any statute or statutes of this State" (emphasis added). Section 6 of Chapter 123 deleted the above-indicated language and substituted therefor: "nor shall any provision hereof annul or modify any pension statute or statutes of this State" (emphasis added).

^{7/} The nintieth day was Sunday, January 19, 1975 so the effective date of the amendments is generally accepted as January 20, 1975.
^{8/} See statement accompanying the introduction of S-1087.

Also, significant to the instant determination is the language added to N.J.S.A. 34:13A-5.3 by Section 4 of Chapter 123, which reads as follows:

"Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement" (emphasis added).

With regard to the Board's arguments concerning the meaning of the amendment to N.J.S.A. 34:13A-8.1, the Commission notes that in two recent decisions^{9/} it concluded that the amendment to Section 8.1 did not constitute an implied repealer of statutes dealing with terms and conditions of employment, but that it was intended to remove any doubt regarding the negotiability of terms and conditions of employment in those areas within the authority and discretion of the employer and to compel negotiations concerning such matters.

In the decision In re State of New Jersey (Local 195), P.E.R.C. No. 77-57, p. 18, 3 NJPER 121 (1977), the Commission concluded that:

"the change in N.J.S.A. 34:13A-8.1 means that general statutes giving authority to employers are not to be read as shields to the employer's obligation to negotiate regarding terms and conditions of employment, but specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations." In re State of New Jersey (Local 195), supra, at p. 18.

In a later decision, In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER ____ (1977), the Commission explored

^{9/} In re State of New Jersey (Local 195), P.E.R.C. No. 77-57, 3 NJPER 118 (1977), Appeal pending, App. Div. Docket No. A-3809-76, and In re State of New Jersey (State Supervisory Employees Association), P.E.R.C. No. 77-67, 3 NJPER 138 (1977), Appeal pending, App. Div. Docket No. A-4019-76.

the relationship between the Public School Education Act of 1975 and the New Jersey Employer-Employee Relations Act. The Commission stated that:

"The Public School Education Act of 1975 in the broadest possible terms delegates to local school districts the authority and indeed the obligation to establish local educational plans, goals and standards to implment a thorough and efficient system of free public education. To read these broad, general grants of authority as specific shields to an employer's obligation to negotiate regarding terms and conditions of employment would be to misconstrue the purposes behind both the Education Act and the New Jersey Employer-Employee Relations Act as well as to ignore the words of both statutes. In re Ridgefield Park Board of Education, supra, p. 10.

We believe the foregoing discussion indicates that one of the purposes of Chapter 123, Public Laws of 1974, intended by the Legislature was to effectuate the expansion of the scope of arbitrable issues. Accordingly, we have held repeatedly that a dispute arising from a contract entered after the effective date of Chapter 123, if the matters in dispute concern either mandatory or permissive subjects of negotiations, is arbitrable if otherwise arbitrable under the parties' agreement.^{10/}

10/ In a scope of negotiations proceeding the Commission addresses the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. In this type of proceeding the Commission will not determine whether the facts are as alleged by the grievant, whether the contract provides any defenses to the employer's alleged action, or even whether there is a valid arbitration clause in the parties' agreement. These are questions appropriate for determination by an arbitrator and/or the courts. In re Hillside Board of Education, P.E.R.C. No. 76-16, 2 NJPER 49 (1976).

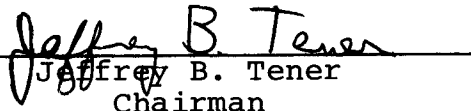
As to the contention in the Board's brief that the Commission should reconsider its recognition of permissive subjects of negotiation, this same argument was advanced in the recently decided case of In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977) where we also discussed the general negotiations obligation regarding terms and conditions of employment. The question was fully considered therein and the Commission reiterated its earlier holdings that the trichotomy of mandatory, permissive and illegal subjects of negotiations best reflects the intent of the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-1 et seq. Cf. N.J.A.C. 19:13-3.7.

Having already determined in several prior decisions that Board decisions to transfer and/or to reassign teaching personnel are permissive subjects of negotiations,^{11/} the Commission concludes that the matters at issue in the instant proceeding would be arbitrable if otherwise arbitrable under the parties' agreement.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the matters in dispute, i.e., the transfer and the reassignment of teaching personnel by the Ridgefield Park Board of Education, are permissive subjects of collective negotiations and are arbitrable if otherwise arbitrable under the parties' agreement, such agreement having been entered into after the effective date of Chapter 123 of the Public Laws of 1974. The Board of Education's continuing request for a permanent restraint of arbitration is hereby dismissed.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett & Parcels voted for this decision.

Commissioners Hipp and Hurwitz abstained.

DATED: Trenton, New Jersey
August 16, 1977

ISSUED: August 17, 1977

11/ With reference to transfers see In re Board of Education of the City of Trenton, P.E.R.C. No. 77-24, 2 NJPER 35 (1976); with reference to teaching assignments see In re Board of Education of the Borough of Verona, P.E.R.C. No. 77-42, 3 NJPER 80 (1977) and In re North Plainfield Education Association, P.E.R.C. No. 76-16, 2 NJPER 49 (1976).