

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CRANFORD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-62

CRANFORD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Cranford Board of Education for a restraint of binding arbitration of a grievance filed by the Cranford Education Association. The grievance asserts that a teacher was improperly placed on the salary guide. The Commission concludes that initial salary guide placement is a mandatorily negotiable issue and the Board's arguments about the timeliness of the grievance address contractual arbitrability issues rather than negotiability concerns.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Lindabury, McCormick & Estabrook, attorneys (Anthony P. Sciarrillo, of counsel; Anthony P. Sciarrillo and Christine M. Martinez, on the brief; Anthony P. Sciarrillo, on the reply brief)

For the Respondent, Bucceri & Pincus, attorneys (Mary J. Hammer, on the brief)

DECISION

On May 21, 2002, the Cranford Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Cranford Education Association. The grievance asserts that a teacher was improperly placed on the salary guide.

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

The Association represents teachers and certain other school personnel. The parties' collective negotiations agreement is effective from July 1, 2001 through June 30, 2003. The grievance procedure ends in binding arbitration.

The parties' 1990-1992 contract contained a provision entitled "Salary Policies for Non-Administrative Instructional Staff (Effective July 1, 1990 through June 30, 1992)." It provided, in part:

Initial placement on the guide shall be determined by (a) level of training and (b) years or creditable teaching, teaching-related, or active military services (maximum of four years' credit for military service). Only continuous service (not day-to-day nor on call service) is creditable. Credit for teaching service in non-public schools may be credited in part or in full at the discretion of the Superintendent of Schools. In computing the total years of creditable service, a final fraction of one-half (5 months) or more will be counted as one full year, and a smaller fraction will be dropped.

However, any teacher who has not been actively involved in teaching for more than five (5) consecutive years, shall be given previous outside experience credit based on a formula of one (1) year's credit for every two (2) years previous experience.

Article 3 of the collective negotiations agreement specifies the parties' grievance procedure. Grievances must be initiated within 30 calendar days from the time when the grievant is apprised of the occurrence constituting the grievance.

Donna Vaupel was hired by the Board in 1991 as a part-time employee as part of a job-sharing team with another employee. She became a full-time teacher in 1993.

On May 30, 2000, Vaupel wrote to William Cashman, the deputy superintendent, and requested a review of her 1991 salary guide placement. Vaupel stated that she was not given credit for

the 12 1/2 years she had taught in Roselle. She stated that since she did not see a teacher's salary guide when she was initially hired, the question about her placement did not come up until her third year of employment. She stated:

I discussed this with the Personnel Director at that time, and I was told that since there was a five year "gap" since my full time, contracted employment in Roselle, I was only given a two-for-one credit. I referred to the teachers' contract to ask for review/clarification of the term "actively teaching". I stated that I had been "actively teaching" during that time (I worked in Garwood as a contracted employee part-time, for three of those years, was the adjunct Director of the musicals at Hillside and also coordinated/created and taught courses at Union County College for Kids, and conducted workshops for the Star Ledger-Newspaper in Education Program.)

He said he would talk to the Board Attorney about it. Several weeks went by and when I asked about the matter, I was told that this was a "gray area". I felt confident in my record and wanted to pursue the matter, but he said "it would be in my best interest" to let it go. As I was up for tenure, I felt somewhat intimidated by that comment so I let it drop.

This matter has been a concern to me for some time, and although it is my ninth year in Cranford, it is only this last year that I have felt comfortable enough to pursue the matter again. In the interest of fairness, I respectfully request to be placed on the appropriate step of the salary guide.

On November 15, 2000, Cashman responded to Vaupel that her employment history was confirmed and that at that time, in September 1991, she was provided one year credit for two years of employment. He stated that a review of the agreement in effect in 1991 and all agreements through 2000 indicates that the placement

is appropriate and there does not appear to be a basis for adjustment. On January 23, 2001, Cashman advised Vaupel that, at her request, he had conferred with the Board attorney who had confirmed the original opinion that she is not eligible for movement on the salary guide.

On February 28, 2001, Vaupel and the then superintendent, Emalene Renna, signed an agreement on the salary guide issue. It stated:

In order to rectify a misplacement on the salary guide of Donna Vaupel, it is hereby agreed by the parties that as of September 1, 2001 Donna Vaupel will be placed at Scale V, MA+15, step 23 of the Teachers' Salary Guide for 2001-02.

On June 27, 2001, the Association filed a grievance asserting that the agreement entered into between Vaupel and Renna was not being honored and that should the settlement agreement be found unenforceable, Vaupel should be placed on the salary guide in accordance with years of experience. Renna retired from the district.

On June 13, 2001, Lawrence S. Feinsod, the new superintendent, wrote to Vaupel. He stated, in part:

This letter will serve to memorialize our meeting of June 1, 2001. Additionally, I reviewed your personnel file and the document signed by Dr. Renna. I am also aware that you previously met with Mr. Cashman on this matter.

This review was requested because of your position that language of the collective bargaining agreement may not have been appropriately applied to you for initial placement on the salary guide in September of

1991 as part of a job-sharing team with Mary Goodfellow and your position that you are entitled to additional steps on the salary guide.

My review indicates your employment history was confirmed at the time of your appointment and you were provided one year credit for each two years of employment.

The collective bargaining agreement in place in September of 1991 as well as the collective bargaining agreement through and to July 1, 2000 indicates that your placement is appropriate. There does not appear to be a basis for an adjustment in your placement at this time. According to your own recounting of your employment history, you were not actively teaching as is required under the agreement.

I am aware from our discussion that this matter was a concern to you for some time, however, you waited until your ninth year in Cranford to raise the issue to the Superintendent. If the issue had been raised upon your employment and/or shortly thereafter, it would have been considered by Dr. Lucash and/or Dr. Paul, the administrators who reviewed and recommended your initial employment. However, I am of the opinion that a review by the prior administrators would yield an opinion consistent with your current placement.

On August 15, 2001, the superintendent denied the grievance. On December 3, the Board denied the grievance. On December 4, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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. [Id. at 154]

Thus, we cannot consider the merits of the grievance or the parties' contractual defenses.

Local 195, IFPTE v. State, 88 N.J. 393 (1982) articulates a three-part test for determining negotiability.

[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 404-05]

The Board argues that Vaupel is time-barred from proceeding to arbitration since it has been nine years since her initial placement on the salary guide. Additionally, it argues that this grievance is not arbitrable because the contract language cited by the Association has been deleted from the current agreement.

The Association argues that initial placement on a salary guide is a mandatorily negotiable issue. Further, the Association

responds that the Board's timeliness and contract provision arguments are contractual defenses appropriate for consideration by an arbitrator.

The Board replies that the delay in filing this grievance is unreasonable, unexcused and prejudicial.

Under the negotiability balancing test, initial placement on the salary guide is a mandatorily negotiable issue. Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 25 N.J. 357 (1999). The Board's arguments address contractual arbitrability issues rather than negotiability concerns. Ridgefield Park; Middle Tp., P.E.R.C. No. 86-42, 11 NJPER 633 (¶16221 1985). We therefore decline to restrain arbitration.

ORDER

The request of the Cranford Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, Mastriani, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: September 26, 2002  
Trenton, New Jersey  
ISSUED: September 27, 2002