

P.E.R.C. NO. 93-97

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUENA REGIONAL SCHOOL DISTRICT  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-51

BUENA REGIONAL EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Buena Regional Education Association against the Buena Regional School District Board of Education. The grievance alleges that the Board violated the parties' collective negotiations agreement by paying a guidance counsellor a salary off the salary guide. The Commission finds no basis for concluding that N.J.S.A. 18A:28-5 requires that an administrator who voluntarily transfers to a guidance counsellor's position continue to be paid at the administrator's salary. To the extent the Board attempted to fix the administrator's salary as a guidance counsellor, it was addressing an issue that was within its obligation to negotiate with the majority representative for guidance counsellors.

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Appearances:

For the Petitioner, Capizola Fineman Kutner & Pagliughi,  
attorneys (Darrell Fineman, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On December 21, 1992, the Buena Regional School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Buena Regional Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by paying a guidance counsellor a salary off the salary guide.

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

The Association represents the Board's classroom teachers, guidance counsellors, and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1990 through June 30, 1993. The contract contains salary guides for teachers; the salary guide for the 1992-1993 school year ranges from \$27,119 to \$52,457. The contract also specifies that agreements with individual employees are subject to the terms of the collective negotiations agreement. The grievance procedure ends in binding arbitration.

Joyce Sobolowski was a supervisor of federal and funded programs, an administrative position outside the Association's negotiations unit. She had tenure rights in that position.

On May 14, 1992, the Superintendent recommended that Sobolowski be disciplined by the Board for reasons not specified in the record. On June 16, 1992, the Board and Sobolowski entered into an agreement under which Sobolowski requested a transfer to the position of high school guidance counsellor, effective September 1, 1992; Sobolowski relinquished her tenure rights to the administrative position; the Board agreed to pay Sobolowski her salary increment for the 1992-1993 school year, thus making her salary \$67,500 plus a longevity payment; the Board agreed to maintain her salary at \$67,500 plus longevity payments for future years until she reached an equal or higher salary under the salary guide for guidance counsellors; and the Board agreed not to take any further action against Sobolowski and to remove the superintendent's

disciplinary recommendation from her personnel file. In sum, Sobolowski relinquished her tenure rights to an administrator's position, but the Board agreed to continue paying her an administrator's salary.

On October 7, 1992, the Association filed a grievance asserting that Sobolowski's salary was neither on nor within the negotiated salary guide for guidance counsellors. It asked that Sobolowski be paid a salary on the guide and that the salaries for all unit members be adjusted "so their salary differential with the new maximum remains status quo."

On October 21, 1992, the Board denied the grievance. The Board asserted that the grievance was not contractually arbitrable.

On November 21, 1992, the Association demanded binding 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 do not consider the contractual arbitrability or merits of the Association's grievance.

N.J.S.A. 34:13A-5.3 requires negotiations over terms and conditions of employment. Compensation is a mandatorily negotiable term and condition of employment. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 331-332 (1989); Woodstown-Pilesgrove Reg. H.S. Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589 (1980); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 6 (1973). Further, when an employee is transferred from a position in one negotiations unit to a position in another negotiations unit, the exclusivity doctrine requires that the employee's salary be established through negotiations with the majority representative of the employee's new negotiations unit. New Providence Bd. of Ed., P.E.R.C. No. 93-60, 19 NJPER 112 (¶24052 1993); Trenton Bd. of Ed., P.E.R.C. No. 83-37, 8 NJPER 574 (¶13265 1982), recon. den. P.E.R.C. No. 83-62, 9 NJPER 15 (¶14006 1982), aff'd App. Div. Dkt. No. A-1606-82T3 (3/16/84). Thus, this grievance presents a mandatorily negotiable issue: the salary to be paid to a guidance counsellor who has been transferred into a negotiations unit represented by the Association.

The Board asserts that it has a managerial prerogative to continue to pay Sobolowski as an administrator although she has been transferred to a guidance counsellor position.<sup>1/</sup> It relies on Plainfield Ass'n of School Administrators v. Plainfield Bd. of Ed., 187 N.J. Super. 11 (App. Div. 1982) and Camden Bd. of Ed., P.E.R.C.

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<sup>1/</sup> The Association does not challenge Sobolowski's transfer into its negotiations unit.

No. 88-18, 13 NJPER 718 (¶18268 1987). Neither case supports the Board's position.

In Plainfield, a high school principal was transferred to the position of elementary school principal. Even though the principal's salary was not immediately reduced, the long-term effect of the transfer was to reduce her salary in the future. An arbitrator held that the principal was contractually entitled to retain her higher salary as a high school principal. An Appellate Division panel, however, vacated that award. It concluded that a school board's prerogative to transfer an employee would be compromised if an arbitrator could order the board to continue to compensate the employee on the basis of a position she no longer filled and that the board could not be required to pay the employee an amount in excess of that established by the collective negotiations agreement for her new position. Unlike Plainfield, this case does not involve a claim by the majority representative of the employee's new position that the transferred employee should be paid the previous salary for her old position. Instead, consistent with Plainfield, the grievance seeks to have the employee paid the salary negotiated by the majority representative for her new position.

In Camden, two employees were transferred from certain clerical positions to other clerical positions within the same negotiations unit. Their majority representative asserted that the employer had agreed to "red-circle" their previous salaries. We

held that this claim was mandatorily negotiable and legally arbitrable. We rejected the employer's assertion that Plainfield entitled it to determine by itself the salaries for transferred employees and concluded instead that the majority representative and the employer could agree to modify the negotiated salaries for unit positions so that the employees would be paid at their previous rates. Unlike Camden, this case does not involve an intraunit transfer or an alleged agreement with the employee's current majority representative to have the transferred employee retain her previous salary. Instead, consistent with Camden, the grievance seeks to have the employee paid the salary that has been negotiated by the union that represents her in her new position.

The Board also contends that N.J.S.A. 18A:28-5 preempts negotiations. A statute or regulation will not preempt negotiations unless it expressly, specifically, and comprehensively sets a term and condition of employment. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). N.J.S.A. 18A:28-5 protects tenured school board employees against reductions in compensation without just cause as established in a proceeding before the Commissioner of Education. We know of no basis for concluding that N.J.S.A. 18A:28-5 requires that an administrator who voluntarily transfers to a guidance counsellor's position continue to be paid at the administrator's salary. To the extent the Board attempted to fix Sobolowski's salary as a guidance counsellor for

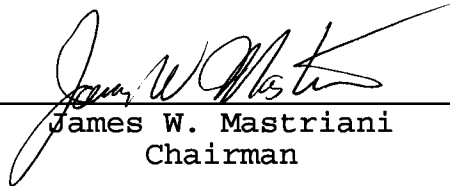
1992-1993 and succeeding years, it was addressing an issue that was within its obligation to negotiate with the Association under N.J.S.A. 34:13A-5.3.

We conclude that the compensation to be paid Sobolowski in her position as guidance counsellor is a mandatorily negotiable subject. We therefore decline to restrain arbitration.

ORDER

The request of the Buena Regional School District Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: April 29, 1993  
Trenton, New Jersey  
ISSUED: April 30, 1993