

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-79-78

HOPE TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Special Assistant to the Chairman issues an Interlocutory Decision denying the Board of Education's request for a temporary restraint of arbitration. The Special Assistant concluded that the gravamen of the relevant grievance relates to an alleged unilateral increase in workload and not to the Board's right to determine whether it will employ teacher aides in a particular school year. The Special Assistant is satisfied in light of the Association's amended demand for arbitration, that the Association is not seeking to require the Board to hire teaching aides, but is seeking compensation or additional release time because of the alleged unilateral increase in the workload of certain teachers. The Special Assistant therefore concluded, consistent with pertinent Commission and judicial precedent, that the increase in the workload of certain teachers relates to a required subject for collective negotiations and that a dispute concerning this issue could proceed to arbitration if otherwise arbitrable under the parties' agreement.

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Appearances:

For the Petitioner, Lyn Paul Aaroe, Esq.

For the Respondent, Mr. John A. Thornton, Jr.

INTERLOCUTORY DECISION

On March 1, 1979 the Hope 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 a certain matter in dispute between the Board and the Hope Township Education Association (the "Association") is within the scope of collective negotiations.

The Board has indicated in its scope petition that the instant dispute has arisen with respect to a particular matter which the Association has sought to process pursuant to a negotiated grievance procedure and concerning which the Association has invoked arbitration pursuant to this grievance procedure. More specifically, the Board asserted that at issue was the negotiability and arbitrability of the assignment of teacher aides to assist teachers in the performance of their professional duties.

The Board also requested that the Commission grant interim relief in the form of an order temporarily restraining arbitration proceedings concerning the issue in dispute during the pendency of this scope of negotiations petition. Although the Board has apparently been granted an indefinite postponement of the arbitration hearing scheduled in this case by the appointed arbitrator, the Board has requested a written Interlocutory Decision in this matter since it still desires to pursue its application for interim relief in the form of a temporary restraining order.

The Commission has delegated to the undersigned, as Special Assistant to the Chairman, 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.^{1/}

Prior Commission decisions have stated that the function of the undersigned in a matter requesting a temporary restraint of arbitration is limited to a determination as to whether there is any reasonable basis for the contention of the Board that the matter in dispute may be found not to be within the scope of collective negotiations and therefore nonarbitrable.^{2/} In such

^{1/} See Board of Education of the City of Englewood v. Englewood Teachers Association and the Board of Education of the Borough of Tenafly v. Tenafly Teachers Association, 135 N.J. Super. 120 (App. Div. 1975), reversing and remanding P.E.R.C. No. 86, 1 NJPER 34 (1975).

^{2/} See e.g., In re Ridgefield Park Board of Education, P.E.R.C. No. 77-45, 3 NJPER 150 (1977).

circumstances, i.e., where the matter in dispute is not a mandatory subject for collective negotiations, the requested relief will issue.

The relevant facts in the instant matter are apparently uncontroverted. The Board and the Association are parties to a collective negotiations agreement covering the period between July 1, 1977 and June 30, 1979. The agreement in part contains a provision for the resolution of contract disputes which culminate in final and binding arbitration administered pursuant to the rules of the American Arbitration Association.

Since the 1974-75 school year the Board has apparently furnished teacher aides to teachers when the class size became greater than 30 students. The Association filed a grievance and later a demand for arbitration concerning its claim that for the 1978-79 school year the Board refused to supply teacher aides under similar circumstances in violation of past practices and the existing contract between the parties. The original demand for arbitration filed by the Association sought as a remedy an award mandating the assignment of teaching aides in accordance with prior practices. An amended demand for arbitration was later filed by the Association that in part deleted any reference in the "remedy sought" section to the assignment of teaching aides. The Association is now seeking compensation or release time for the increased workload of certain classroom teachers.

The Board in part argues that the decision to assign teacher aides to classroom teachers is a management prerogative not subject to mandatory negotiations or binding arbitration. The Board asserts that this case should be viewed as a matter involving the Board's right to hire and deploy its professional personnel. The Board maintains that the Association's original demand for arbitration accurately reflects the gravamen of its grievance. The Board of Education argues in the alternative that if the gravamen of the grievance is determined to relate to a required subject, it intends to assert that the issue is not procedurally arbitrable, i.e., the Association failed to follow procedures that were established for grievance handling within the existing collective negotiations agreement.

The Association submits that the Board's procedural arbitrability defense does not raise a legitimate scope of negotiations issue and instead is a contractual defense that should be resolved in the arbitration forum. The Association also maintains that the relevant grievance relates solely to the workload of teachers which has been determined by the Commission and the Courts to be a required subject for collective negotiations.

It must first be established 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 of a case, analyzes 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, 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.^{3/}

The undersigned agrees with the Association that the Board's procedural arbitrability argument is misplaced in the scope context and is appropriately raised before the appointed arbitrator.

Moreover the undersigned finds, after careful consideration of the parties' submissions in this matter that the gravamen of the relevant grievance in this case relates to an alleged unilateral increase in workload -- a required subject for collective negotiations -- and not to the Board's right to determine whether it will employ teacher aides in a particular school year. Therefore, a dispute relating to this term and condition of employment may be submitted to arbitration, pursuant to the procedures contained in the parties' contract, if otherwise arbitrable under the parties' agreement. I am satisfied, in light of the Association's amended demand for arbitration referred to hereinbefore, that the Association is not seeking to require the Board to hire teaching aides, but is seeking compensation or additional release time because of the alleged unilateral increase in the workload of certain teachers. The specific decision whether or not to hire teaching aides in a given academic

^{3/} The New Jersey Supreme Court in Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), cited the above language with approval when it discussed the jurisdiction of the Commission in scope of negotiations proceedings.

year is a managerial prerogative and in light of Ridgefield Park, supra, can neither be subject to negotiations nor to arbitration.

The Supreme Court in State v. State Supervisory Employees Association, et al, 78 N.J. 54 (1978), 4 NJPER 347 (¶4165 1978), citing Dunellen Bd of Ed v. Dunellen Ed. Ass'n, 64 N.J. 17 (1973), held that negotiable terms and conditions of employment are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreements did not significantly interfere with the exercise of inherent managerial prerogatives pertaining to the determination of governmental policy. Judicial decisions in this State as well as Commission decisions have uniformly held that an employee's workload clearly relates to terms and conditions of employment and thus is mandatorily negotiable.^{4/} It has been determined essentially that negotiated agreements on a teachers' workload, for example, would not significantly interfere with the exercise of managerial prerogatives pertaining to a determination of educational policy. Disputes relating to workload issues may be submitted to arbitration, if otherwise arbitrable, for resolution.

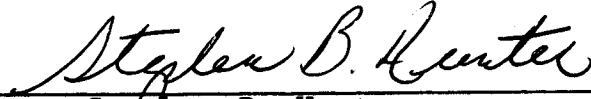
It must be emphasized that the undersigned's determination that the alleged affect on workload is negotiable and arbitrable does not mean that any change has in fact occurred or that such a change, assuming it did occur, would violate the parties' contract. These questions are for the arbitrator, including the question of an appropriate remedy, if any, assuming a violation occurred.

^{4/} See e.g., Burlington Cty Coll. Faculty Ass'n v. Board of Trustees, 64 N.J. 10 (1973); Byram Twp Bd of Ed v. Byram Twp. Ed Ass'n, P.E.R.C. No. 76-27, 2 NJPER 143 (1976) affmd 152 N.J. Super. 12 (App. Div. 1977); In re Rahway Board of Education, P.E.R.C. No. 79-30, 5 NJPER 23 (¶10015 1978) and In re Fair Lawn Bd of Ed, P.E.R.C. No. 79-44, 5 NJPER 48 (¶10032 1979).

ORDER

In light of the foregoing discussion, the undersigned therefore concludes that the Board's request for a temporary restraint of arbitration must be denied.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, reading "Stephen B. Hunter". The signature is written in dark ink and is positioned above a horizontal line.

Stephen B. Hunter
Special Assistant to the Chairman

DATED: Trenton, New Jersey
May 1, 1979