

P.E.R.C. NO. 93

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

THE BOARD OF EDUCATION OF THE
CITY OF ENGLEWOOD,
Petitioner,

-and-

Docket No. SN-9

ENGLEWOOD TEACHERS' ASSOCIATION
Respondent.

SYNOPSIS

The Executive Director, acting on behalf of the Commission, issues an order restraining and enjoining arbitration during the pendency of a scope of negotiations proceeding. The disputed matter involves a grievance resulting from the decision of the Board to close one of the City's schools. The Association seeks to arbitrate a dispute regarding the non-reemployment of certain non-tenured teachers as a result of that decision.

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For the Petitioner, Messrs. Wittman, Anzalone,
Bernstein & Dunn, Esqs.
(Mr. Thomas W. Dunn, of Counsel)

For the Respondent, Messrs. Goldberg & Simon, Esqs.
(Mr. Theodore M. Simon, of Counsel)

INTERLOCUTORY DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Board of Education of the City of Englewood (the "Board") with the Public Employment Relations Commission (the "Commission") March 26, 1975 requesting the Commission to make a determination as to whether certain matters in dispute with the Englewood Teachers' Association (the "Association") are within the scope of collective negotiations.

The Board indicated that the dispute has arisen regarding a certain matter which the Association has sought to process pursuant to the collectively negotiated grievance procedure and concerning which the Association is attempting to invoke arbitration pursuant to their contract grievance procedure.

The Board requested that the Commission temporarily restrain arbitration during the pendency of the proceeding. The

undersigned, having been delegated the authority to act on this matter on behalf of the Commission, issued an Order to Show Cause March 27, 1975 with a return date of April 7, 1975. Pursuant thereto, the parties appeared and presented oral and written argument.^{1/}

Thereafter, the undersigned issued an Interlocutory Decision on behalf of the Commission denying the request for restraints essentially for the reason that those elements of unfair practice proceedings which lend themselves to the assertion of authority to grant interim relief in appropriate circumstances^{2/} are absent in a scope of negotiations proceeding.^{3/} The Appellate Division reversed that decision, holding that the Commission has the power and jurisdiction to grant interim relief in pending scope of negotiations proceedings.^{4/}

^{1/} This matter and another one, the Board of Education of the Borough of Tenafly and Tenafly Teachers' Association, Docket No. SN-7 were argued together and were consolidated for the purpose of the issuance of the interlocutory decision discussed below. These matters are hereafter being processed separately before the Commission.

^{2/} The Commission has adopted rules of practice governing such requests in unfair practice proceedings. See N.J.A.C. 19:14-9.1, et seq., effective April 1, 1975.

^{3/} P.E.R.C. No. 86, May 7, 1975, 1 NJPER 18 (1975).

^{4/} The 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, N.J. Super (App. Div.) Docket No. A-3421-74 and A-3422-74, decided June 27, 1975, rev'g and remanding P.E.R.C. No. 86. In its decision, the Court said, "Considering these broad powers granted to it by the Legislature, we can conceive of no reason why PERC should not have the power to grant interim relief during the pendency of a scope of negotiation proceeding. Certainly, PERC has the power to terminate any arbitration proceedings by issuing its final order in a scope proceeding. Implicitly,

(Continued)

The disputed matter herein involves a grievance resulting from the decision of the Board to close one of the City's schools. The Association seeks to arbitrate a dispute regarding the non-reemployment of certain non-tenured teachers as a result of this decision.

The Board contends that the subject in dispute does not concern terms and conditions of employment but involves a matter of educational policy within the exclusive prerogative of the Board. The Board argues that this matter is not arbitrable.

The position of the Association is that the matter in dispute concerns terms and conditions of employment and relates to an alleged violation of the contract between the parties and that it lies within the contractually agreed upon grievance procedure. Thus, this matter should proceed to arbitration in accordance with the parties' agreement.

4/ (Continued from Pg. 2)

it should have the power to suspend arbitration whenever it determines it reasonable to do so. Obviously, if the result of a given scope proceeding would negate arbitration, the prosecution of arbitration proceedings in the interim would constitute a monumental waste of time and energy.

Again, we cannot conclude that it was the intent of the Legislature to compound scope procedures by requiring resort to another tribunal during their pendency. It seems more probable that it was the legislative intent that all issues relevant to scope of negotiations be determined in one forum. (Citation omitted) We find that in vesting PERC jurisdiction over questions of scope of negotiability, the Legislature intended to include the jurisdiction and power to grant interim relief in such proceedings.

Subsequent to the issuance of the Appellate Division decision, supra., the Board renewed its request that an order issue restraining arbitration pending a determination by the Commission on the merits. The Association contends that no restraints should issue.


Given the language of the decision in Englewood, quoted at length above, it appears that arbitration should be enjoined upon appropriate application when a bona fide scope of negotiations question has been presented to the Commission for determination. This policy will avoid the "monumental waste of time and energy" referred to by the Court in the prosecution of an arbitration proceeding if the result of a scope proceeding could negate arbitration.

The ultimate administrative decision in scope of negotiations proceedings will be made by the Commission. See Rule Section 19:13-3.7. The undersigned views his function as being limited to a determination as to whether there is any reasonable basis for the contention of the requesting party that the matter(s) in dispute may be found not to be within the scope of collective negotiations and therefore not arbitrable. In such circumstances, the requested order will issue.

With respect to the instant matter, the undersigned has heard the arguments of counsel and considered the briefs submitted herein, and concludes that there is a bona fide dispute as to whether the matter to be presented to arbitration is within the scope of collective negotiations.

IT IS, THEREFORE, ORDERED on this 25th day of July, 1975, that the Respondent, Englewood Teachers' Association, its officers, agents, employees, and attorneys and such persons in active concert or participation with them shall be and hereby are enjoined and restrained from proceeding to arbitration pending a final administrative determination by the Commission of the within scope of negotiations petition or until further order of the Commission.

IT IS FURTHER ORDERED that the petitioner shall serve copies of the within order upon the Respondent and that service shall be accomplished pursuant to N.J.A.C. 19:17-1.3.



Jeffrey B. Tener
Executive Director