

P.E.R.C. NO. 78-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ORANGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-40

WEST ORANGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board of Education, the Commission determined that the matter in dispute involving teacher evaluation criteria is a permissive subject for collective negotiations and the matter of teacher evaluation procedures is a mandatory subject for negotiations. In conformity with past Commission decisions, the Commission concluded that the grievance relating both to teacher evaluation criteria and teacher evaluation procedures may be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' collective negotiations agreement.

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Appearances:

For the Petitioner, Samuel A. Christiano, Esq.

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the West Orange Board of Education (the "Board") on June 13, 1977, requesting a determination by the Public Employment Relations Commission (the "Commission") as to whether criteria to be utilized in the evaluation of teachers is within the scope of collective negotiations.

The Board and the West Orange Education Association (the "Association"), as the exclusive representative of the teachers employed by the Board, entered into a written agreement for the period September 23, 1975 to September 23, 1977. Article II of that agreement establishes a grievance procedure which culminates in binding arbitration. The present question originally arose as a grievance filed by the Association on October 21, 1976, alleging that the Board had adopted new procedures for teacher

evaluation without prior negotiations with the Association. Thereafter, the Association, on November 19, 1976, sought to invoke the arbitration step of the grievance procedure. The Board countered by filing the instant petition.

The Board, relying on Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973), asserts that the establishment of criteria to be used in teacher evaluation is a non-negotiable matter of management's rights. With regard to evaluation criteria the Association takes the position that it is a term and condition of employment mandatorily negotiable and arbitrable.^{1/}

However, the letter in lieu of a formal brief filed by counsel for the Association contains the following statement: "It must be emphasized that what the Association is complaining of in the instant matter is the procedures which will be used in the evaluation process and not the substance of any particular evaluation". Since the Board's petition requests a decision as to whether evaluation criteria is within the scope of negotiations, a question arises concerning the true nature of the issue

^{1/} Inexplicably the Association, in its letter in lieu of a formal brief, cited the case of In re New Milford Board of Education, P.E.R.C. No. 77-25, 2 NJPER 353 (1976), to support its contention that teacher evaluation criteria is mandatorily negotiable and arbitrable. Yet in that case the Commission, applying the pre-Chapter 123 standard for determining the scope of negotiations, determined that the evaluation criteria of "willingness to extend oneself professionally" was not arbitrable, being an educational policy judgment.

in dispute. After a careful examination of the tentative guidelines for evaluation of teachers^{2/} the Commission finds that it includes both procedures for evaluation and the method for establishing evaluation criteria.

Concerning procedures, the guidelines require evaluations to be conducted only by certified personnel, a conference must be conducted with the teacher within 15 days after the observation, a written narrative of each observation must be filed on forms provided by the personnel office, and the teacher has a right to submit a written disclaimer of the evaluation which is attached to the evaluation report.

With regard to evaluation criteria, the guidelines provide that each teacher is to confer with the appropriate supervisors at the beginning of the school year to mutually develop written objectives for that year, which are to take into account objectives of the Board of Education, the Superintendent, principal, and the appropriate subject directors, as well as the specific objectives of the teacher concerned. An evaluation is to include an assessment of the teacher's total performance with regard to the objectives mutually developed at the beginning of the school year. Accordingly, the Commission will address the question of the negotiability of both evaluation procedures and criteria.

^{2/} It was the unilateral approval by the Board of Education on September 14, 1976 of these tentative guidelines for teacher evaluation which precipitated the filing of the grievance by the Association. A copy of the tentative guidelines was submitted by the Association at the request of the Commission.

The Commission has consistently held evaluation procedures, and other related procedures, mandatorily negotiable since they do not involve major educational policies and protect public employees from arbitrary actions by their public employers, In re Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976) (rev'd on other grounds, 150 N.J. Super. 265 (App. Div. 1976)); In re Plainfield Board of Education, P.E.R.C. No. 76-45, 2 NJPER 216 (1976); In re Wyckoff Board of Ed., P.E.R.C. No. 77-41, 3 NJPER 79 (1977).

The Commission, in delineating the scope of negotiations, has made a distinction between the procedures and substantive criteria or qualifications utilized by public employees in hiring, promoting, evaluating and renewing public employees. As noted, such procedures have been classified mandatory subjects of negotiations while substantive criteria and qualifications are classified permissive.^{3/}

After carefully reviewing its three tiered framework for analyzing scope of negotiations questions,^{4/} the Commission,^{5/} consistent with the reasoning in its prior decisions, has

^{3/} In re Englewood Board of Education, supra; In re Plainfield Board of Education, supra; In re Wyckoff Board of Education, supra; In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Byram Township Board of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd N.J. Super. (1977); In re City of Plainfield, P.E.R.C. No. 76-42, 2 NJPER 168 (1976).

^{4/} Subjects are classified as mandatory, permissive or illegal topics of collective negotiations. See N.J.A.C. 19:13-3.9

^{5/} See cases cited in footnote 3.

recently held that the establishment of criteria for teacher evaluations is not mandatorily negotiable, being within management's rights as a matter of major educational policy which only indirectly affects terms and conditions of employment. However, in the absence of any specific statutory proscription, the Commission found that nothing precluded the Board from negotiating concerning this subject matter, i.e., it is a permissive subject of negotiations. In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER (1977), reaffirmed in In re Teaneck Board of Education, P.E.R.C. No. 78-3, 3 NJPER (1977), appeal pending App. Div. Docket No. A-5211-76.

Where a dispute arises under a grievance/arbitration procedure contained in a contract entered into after the effective date of Chapter 123, the matter may be submitted to arbitration if it involves either a required or a permissive subject of negotiations. In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1977). Having found that evaluation criteria is a permissive subject for collective negotiations and evaluation procedures are a mandatory subject for negotiations, the grievance which prompted the filing of this petition can proceed to arbitration, assuming that it is otherwise arbitrable under the parties' agreement. The latter determination is one which the Commission will not render; the Commission, in a scope of negotiations proceeding, addresses solely the abstract question of whether the subject matter in dispute is within the scope of collective negotiations. Whether this permissive subject was, in fact, negotiated by the Board and Association and included in their agreement; whether there is

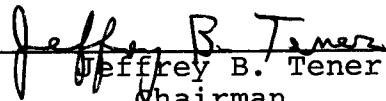
a valid arbitration clause in the agreement; whether the contract provides a defense for the Board's actions or any other questions which might arise concerning this grievance is not within the ambit of a scope proceeding. These questions are appropriate for determination by an arbitrator and/or the courts. In re Hillside Board of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

Accordingly, the Commission, having found that teacher evaluation procedures relate to a mandatory subject of collective negotiations and that teacher evaluation criteria is a permissive subject of negotiations, the grievance may be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' collective negotiations agreement.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), the Commission hereby determines that the matter in dispute involving teacher evaluation criteria is a permissive subject for collective negotiations and the matter of teacher evaluation procedures is a mandatory subject for negotiations. Consequently, this grievance may be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' collective negotiations agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett and Parcels voted for this decision.
Commissioners Hipp and Hurwitz abstained.

DATED: Trenton, New Jersey
October 18, 1977
ISSUED: October 20, 1977