

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIR LAWN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-79-17

FAIR LAWN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board the Commission determines that the appointment of head football coach is not negotiable. The Commission cited its decision in In re Pascack Valley Regional High School District Board of Education, P.E.R.C. No. 77-55, 2 NJPER 114 (1977) wherein it held that the assignment of teachers to extra athletic coaching duties is a managerial policy decision and not negotiable, but also noted that the effect on an employee's terms and conditions of employment associated with selection as head football coach is mandatorily negotiable. The Commission also noted that the selection of athletic coaches has been circumscribed by specific preemptive regulations adopted by the State Board of Education, citing the Supreme Court decision in State Supervisory Employees Association, 78 NJ 54 (1978).

The Commission therefore permanently enjoins the Association from proceeding to arbitration with respect to the appointment of head football coach.

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Appearances:

For the Petitioner, Jeffer, Walter, Tierney, DeKorte,
Hopkinson & Vogel, Esqs. (Mr. Reginald F. Hopkinson,
On the Brief)

For the Respondent, Goldberg & Simon, Esqs.
(Mr. Theodore M. Simon, Of Counsel and Mr. Sheldon
H. Pincus, On the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-79-17, was filed with the Public Employment Relations Commission on October 4, 1978 by the Fair Lawn Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the Board and the Fair Lawn Education Association (the "Association") was within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act") and seeking to enjoin the arbitration of a grievance that was filed relative to the matter in dispute. The Board submitted its brief in support of its position together with the scope petition on October 4, 1978.

On that date, the Board also filed a request for a temporary restraint of arbitration. Stephen B. Hunter, Special

Assistant to the Chairman, scheduled a meeting of counsel for October 20, 1978 to discuss the application for interim relief, but prior to that date the parties informally agreed to a voluntary stay of arbitration pending the Commission's administrative decision in this case. The Association submitted its brief on the merits of this issue on December 5, 1978.

On August 17, 1978, the Association filed a Demand for Arbitration to the American Arbitration Association. The Association sought to arbitrate the "appointment of head football coach in violation of agreement." The Board seeks to permanently restrain this arbitration.

The Association's position is that the Board appointed a head football coach in violation of the collective negotiations agreement between the parties. The Association argues that the position of Head Football Coach is an additional teaching duty included in the collective negotiations agreement for which additional compensation has been negotiated. It argues that appointing an individual who is not a member of the teachers' negotiations unit represented by the Association to a position previously held by a unit member constitutes replacing unit members with non-unit members. This shifting of unit work is mandatorily negotiable.^{1/}

The Association also notes that the appointment was not made consistent with Article VIII(I) of the contract which provides:

"Teacher participation in the activities in Schedule "C" and "D" /coaching and teaching

^{1/} In re Board of Trustees of Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (Para. 4023 1977).

staff level^{1/} and which extend the regularly scheduled school day, shall be voluntary* (unless contracted upon initial employment) and compensated for at the rates so indicated.

*In the event that no qualified teacher volunteers for any of the activities listed in Schedule "C" and "D", the Superintendent may appoint someone to the activity. This appointment shall be made only after consultation with the Association."

The Board's position is that this contract provision is ultra vires, that a board of education's selection of particular individuals for appointment to positions involves major educational policy which can neither be subject to negotiations nor to arbitration. It cites Bd. of Ed. Tp. N. Bergen v. N. Bergen Fed. Teachers, 141 N.J. Super 97 (App. Div. 1976) as support for its right to select employees for various positions without negotiations.

After careful consideration of the parties' submissions in this matter, the Commission concludes that the threshold issue before it is the selection of a head football coach and not the replacement of unit work with non-union employees as the Association maintains.^{2/}

The Board is correct in stating that the selection of candidates for positions by the Board is an educational policy

^{2/} The Association is correct when it states that we have held that the replacement of unit members with new non-unit members is essentially akin to sub-contracting and is mandatorily negotiable. However, we do not regard that as the issue herein. Indeed, it appears from the Association's brief that the head football coach is included in the Association's unit. Therefore, there is no loss of unit work by the Association. A non-unit member who is appointed head football coach becomes a unit member upon appointment if he is not already a unit member.

decision which is neither negotiable nor arbitrable. See N. Bergen, supra. Several years ago, we held that, "the decision to assign teachers to extra athletic coaching duties is a managerial policy decision which is not negotiable under Chapter 303." In re Pascack Valley Regional High School District Board of Education, P.E.R.C. No. 77-55, 3 NJPER 114 (1977) at 115. We went on to determine that, under the Chapter 123 amendments, this was a permissive subject of negotiations. However, that category has been eliminated by the Supreme Court which held that there are but two categories of subjects: those that are mandatorily negotiable and those that are not.^{3/} Therefore, we must hold this matter not to be negotiable. Of course, as we said in Pascack Valley, supra, and as the Board acknowledges, the effect on an employee's term and conditions of employment associated with the person's selection as head football coach is mandatorily negotiable. Such a person must be paid in accordance with the contract and is covered by the contract, if it is true that the contract so provides.

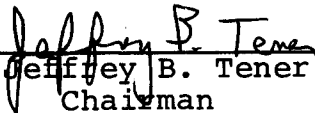
We also note that the authority of the Board in the area of the selection of athletic coaches has been circumscribed by specific preemptive regulations adopted by the State Board of Education. N.J.A.C. 6:29-6.3. These regulations are binding upon all boards in the selection of coaches. State v. State Supervisory Employees Assn., 78 N.J. 54 (1978).

^{3/} Ridgefield Park Ed. Ass'n. v. Ridgefield Park Bd. of Ed., 78 N.J. 114 (1978).

ORDER

Consistent with the above determination, the Commission hereby permanently enjoins and restrains the Fair Lawn Education Association from proceeding to arbitration with respect to challenging the appointment of head football coach.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. None opposed. Commissioners Hipp and Schwartz abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 16, 1978
ISSUED: January 17, 1978