

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF BOONTON BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket No. SN-80-31

BOONTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, permanently restrains the Boonton Education Association from seeking arbitration with regard to Article XI B. 3. The Chairman concluded, consistent with prior Commission decisions, that provisions requiring that teachers receive advance notice prior to classroom observations are illegal subjects for collective negotiations.

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Appearances:

For the Petitioner, Rowe, McMahon, McKeon & Curtin  
(Mr. Thomas R. Curtin, of Counsel and Mr. James L.  
McKeon III, on the Brief)

For the Respondent, Goldberg & Simon  
(Mr. Gerald M. Goldberg, of Counsel)

DECISION AND ORDER

On October 24, 1979, the Boonton Town 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 Boonton Education Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Public Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Board sought to enjoin the continued processing of a grievance that was filed relative to the matter in dispute.

The issue placed before the Commission for determination in this instant proceeding is the negotiability of the following contract provision contained in the present agreement between the parties:

- XI. B. 3. Teachers shall be informed of an observation at least one school day in advance of said observation. This notification shall apply to the minimum number of observations of the tenure staff and to the first two of the nontenure staff.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission. The Board filed a brief dated October 29, 1979. The Association's brief was dated November 16, 1979.

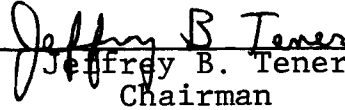
The Commission in two recent decisions has determined that provisions requiring that teachers receive advance notice prior to classroom observations are illegal subjects for collective negotiations. See, In re Bethlehem Township Board of Education, P.E.R.C. No. 80-5, 5 NJPER 290 (¶10159 1979), appeal pending App. Div. Docket No. A-4582-78 and In re Fairview Board of Education, P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979). Contrary to the Association's contentions we have not changed our approach in distinguishing between procedural considerations and substantive criteria or qualifications utilized by public employers in hiring, promoting and evaluating public employees. Procedural provisions will still be classified as required subjects for collective negotiations. In the aforementioned Bethlehem and Fairview decisions we concluded that this specific type of notice provision was more

substantive than procedural and significantly interfered with the exercise of managerial prerogatives, i.e. the manner by which evaluations are conducted.<sup>1/</sup>

ORDER

Based upon the above discussion, it is hereby determined that the contract article at issue (Article XI B. 3) is an illegal subject for collective negotiations. The Boonton Education Association is permanently restrained from seeking arbitration in this matter.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
December 13, 1979

<sup>1/</sup> In Bethlehem, supra, we stated that a similar proposal "...transcends the level of a procedural notice provision and directly affects the substantive aspects of the evaluation process" at 294. We do note that the Commission has not adopted the position espoused by the Board that the issue of notice to teachers concerning classroom observation is pre-empted by N.J.A.C. 6:3-1.121. We have found that provisions such as the article in dispute in the instant matter are not terms and conditions of employment as defined in State v. State Supervisory Employees Assn, 78 N.J. 54 at 67.