

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEEHAWKEN BOARD OF EDUCATION,

Petitioner,

Docket No. SN-78-10

-and-

WEEHAWKEN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Special Assistant to the Chairman, acting on behalf of the entire Commission, issues an Interlocutory Decision denying the Board's request for an order restraining arbitration during the pendency of a scope of negotiations proceeding. The disputed issue relates to the negotiability and arbitrability of the issue of the criteria to be used by an administrator in the evaluation process and any adjustments and decisions made pursuant to these evaluations.

The Special Assistant first notes that in scope of negotiations matters the Commission merely addresses the abstract issue as to whether or not the subject matter in dispute is within the scope of collective negotiations. The Special Assistant finds that the Commission in the past has determined that the matters at issue, i.e., evaluation content and criteria, are permissive subjects of collective negotiations. He further states that the Commission has determined in numerous decisions that: "...a dispute arising under a grievance/arbitration proceeding contained within a contract entered into after the effective date of Chapter 123 of Public Laws of 1974 /January 20, 1975/ may be submitted to arbitration for resolution if it involves either a required or permissive subject of collective negotiations." Based upon the above, the Special Assistant concludes that the matters in dispute are permissively negotiable and may be submitted to arbitration, if otherwise arbitrable under the terms of the parties' agreement.

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Appearances:

For the Petitioner, LeRoy D. Safro, Esq., Of Counsel

For the Respondent, Goldberg & Simon, Esqs.
(Theodore M. Simon and Louis P. Bucceri, On the Brief)

INTERLOCUTORY DECISION

On November 15, 1977, the Weehawken 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 certain matters in dispute between the Board and the Weehawken Education Association (the "Association") are within the scope of collective negotiations.

The Board has indicated in its scope petition that the instant dispute has arisen with respect to certain matters 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 issue of the criteria to be used by a supervisor or administrator in the evaluation process and any adjustments and decisions

made pursuant to these evaluations. The Association had filed a grievance, dated June 29, 1977, alleging that the principal of the High School had violated various contractual provisions by including disparaging remarks and erroneous information concerning the alleged non-cooperation of particular teachers in connection with Association activities within certain annual evaluations. The Association sought as relief the removal of these evaluations from the teachers' file and the reprimanding of the principal that would include an order to limit his evaluations in the future to the quality of the work performed by teachers in the classroom. The matter proceeded through the grievance process. Arbitration was sought and an arbitrator, Julius Cohen, was designated to hear the instant grievance. Arbitration of this particular grievance is presently scheduled for the latter part of January 1978.

The Board's scope petition also requested that the Commission grant interim relief in the form of an order restraining the arbitration proceedings concerning the issue in dispute. In a letter dated November 29, 1977, the Special Assistant to the Chairman of the Commission, citing various Commission decisions concerning the negotiability of the matters at issue in the instant scope petition and the arbitrability of both permissive and mandatory subjects of negotiations, suggested to the parties that it was unlikely that the Commission would grant the Board's request for interim relief. The Board was invited to contact the Special Assistant, if it desired, to proceed further with its request for a

restraint of arbitration. The Board thereafter informed the undersigned that it did desire 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/}

The essence of the Board's position as set forth in its brief in support of its scope petition dated November 11, 1977 is that the issue of the criteria used in the evaluation process, e.g., the quality of a teacher's work outside the classroom setting, and any determination made pursuant to this evaluation, is a managerial prerogative and as such is neither negotiable nor arbitrable. The Board in part cited the recent decision of the Appellate Division involving Byram Township Board of Education^{2/} in support of its contention that the scope of negotiations and

^{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/} In the Matter of Byram Township Board of Education and Byram Township Education Association, Appellate Division Docket No. A-3402-75 (Decided June 16, 1977).

arbitration have not been expanded as a result of the amendments to the Act, Chapter 123, P.L. 1974, and that the New Jersey Supreme Court's analysis set forth in the Dunellen Trilogy of cases is still viable.^{3/}

The Association, in a brief dated November 28, 1977, argued that prior Commission decisions had determined that the issue of evaluation criteria was a permissive subject for collective negotiations not an illegal subject and that therefore the instant arbitration should proceed.

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, is analyzing 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." (footnotes omitted)

As the undersigned noted in the aforementioned November 29,

^{3/} Dunellen Bd. of Ed. and Dunellen Education Assn., 64 N.J. 17 (1973); Bd. of Ed. of Englewood and Englewood Teachers Assn., 64 N.J. 73 (1973); Burlington Ct. Coll. Fac. Assoc. v. Bd. of Trustees, 64 N.J. 10 (1973).

1977 letter, the Commission in the past has determined that the matters at issue in this scope proceeding, i.e., evaluation content and criteria, are permissive subjects of collective negotiations.^{4/} The main Commission case cited by the Board in support of its contentions, In re New Milford Board of Education and New Milford Education Association, P.E.R.C. No. 77-25, 2 NJPER 353 (1976), concerned a dispute that arose under the terms of a Chapter 303, P.L. 1968 agreement and is not dispositive of this instant matter.

The Commission has further determined in numerous decisions that "a dispute arising under a grievance/arbitration procedure contained within a contract entered into after the effective date of Chapter 123 of the Public Laws of 1974 [January 20, 1975] may be submitted to arbitration for resolution if it involves either a required or permissive subject of collective negotiations."^{5/}

Based upon the above, the undersigned concludes that the matters in dispute are permissively negotiable and may be submitted to arbitration, if otherwise arbitrable, under the terms of the

^{4/} See In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER 303 (1977); 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; In re West Orange Board of Education, P.E.R.C. No. 78-19, 3 NJPER ____ (1977); and In re Board of Education of the City of Bridgeton, P.E.R.C. No. 78-34, 3 NJPER ____ (1977).

^{5/} See for example In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976) and In re Ridgefield Board of Education, P.E.R.C. No. 77-45, 3 NJPER 150 (1977). The Commission's thinking relating to the effect of Chapter 123 amendments on scope of negotiations and arbitrability issues is clearly set forth in these decisions and will not be referred to again at this time.

parties' agreement. Therefore, the request of the Board for a temporary restraint of arbitration must be and is hereby denied.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By Stephen B. Hunter
Stephen B. Hunter, Special
Assistant to the Chairman

DATED: Trenton, New Jersey
December 29, 1977