

P.E.R.C. NO. 83-129

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EASTAMPTON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-60

EASTAMPTON TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding commenced by the Eastampton Township Board of Education, the Chairman of the Commission determines that two existing contract articles concerning the Board's right to assign teachers to extra-curricular activities, and to fill vacancies by means of involuntary transfer are not mandatory subjects for negotiation. The Chairman determined that an existing contract article concerning the use of seniority when the employer has determined that qualifications are equal is mandatorily negotiable within certain limitations. The Chairman declines to rule on the negotiability of a proposal designed to reinstate the above articles into the parties' agreement in the event the law concerning negotiability changes as the Board of Education has not disputed the negotiability of such clause.

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Appearances:

For the Petitioner, John H. Holcroft, Superintendent

For the Respondent, Gerard Dunn, President

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed on January 13, 1983 with the Public Employment Relations Commission by the Eastampton Township Board of Education ("Board") alleging that certain matters in dispute with the Eastampton Teachers Association ("Association") were not mandatorily negotiable. The dispute arose during negotiations between the Board and the Association for a successor agreement to cover the 1983-1984 school year.

The Board alleges that three articles in the existing contract between the parties are not mandatory subjects for negotiation. Both parties have submitted statements of position with respect to the matters in dispute.

Where the negotiability of a particular subject has previously been determined by the Commission and/or the Courts,

the Commission has delegated to the undersigned as Chairman of the Commission the authority to issue scope of negotiations determinations on its behalf. Since the matters in dispute herein have been the subject of previous decisions, the undersigned will resolve the disputed issues in this case.

Article VII C 1 of the contract reads as follows:

Teacher participation in extracurricular activities shall be the choice of the teacher.

The Commission and the courts have consistently held that a board of education has a right to assign teachers to perform extracurricular activities. See, e.g., Mainland Reg. Teachers Ass'n v. Bd. of Ed. of Mainland Reg. Sch. Dist., 176 N.J. Super. 476, 482-483 (App. Div. 1980). Accordingly, Article VII, C 1 is not a mandatory subject for collective negotiations.

The second article in dispute, Article XIV A reads:

No vacancy shall be filled by means of involuntary transfer or reassignment if there is a qualified volunteer available to fill such position, who is acceptable to the Board of Education.

Again, this provision has been addressed by the Commission and the courts and involuntary transfers have been held not to be mandatorily negotiable. See, Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) and more recently, In re Local 195, IFPTE v. State, 88 N.J. 393 (1982). Therefore, Article XIV A is not mandatorily negotiable.

Finally, Article XV D of the agreement concerning promotion reads:

Where all qualifications are equal, seniority rights shall be honored in selection of a candidate.

I find this clause to be mandatorily negotiable within certain limitations. In In re Willingboro Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13042 1982), the Commission found a grievance to be non-arbitrable under a similar clause since the gravamen of the grievance contested the public employer's determination as to relative qualifications. However, where it is not in dispute that the qualifications of respective employees are equal, adherence to the above clause would not significantly interfere with the determination of governmental policy. Additionally, this clause cannot be read to limit a pool of eligible candidates to employees presently employed by the public employer. See, Bd. of Ed., Twp. of No. Bergen v. No. Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976).

The Association in its submission asks that the Commission also determine whether the Board may unilaterally remove illegal articles from the agreement without negotiations,^{1/} and

1/ This dispute does not involve the negotiability of an issue. Instead, it addresses the duty to negotiate over non-mandatory subjects. This issue was examined by the New Jersey Supreme Court in Paterson Police PBA v. Paterson, 87 N.J. 78 at p. 88:

Also, a permissive item remains in effect only during the term of the agreement. The public employer is free to delete any permissive item from a successor agreement by refusing to negotiate with respect to that item. Its inclusion in an existing agreement does not convert such an item into a mandatory subject. In re City of Newark and I.A.F.F., Local 1860, supra.

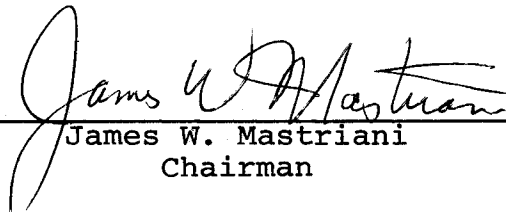
also asks us to address the negotiability of a "resurrection" clause to be placed in the agreement which would have the effect of restoring these three clauses to the agreement, in the event a change in the law governing negotiability made the provisions valid and enforceable.

With respect to these issues, I will decline to issue determinations since I find that no actual dispute exists as to whether a subject is mandatorily negotiable. The Board does not dispute the negotiability of a "resurrection" clause. It instead has asserted that it will not agree to such a clause during the pendency of negotiations. Accordingly, since there is no actual controversy concerning the negotiability of the clause, no decision will be made concerning the Association proposal.

ORDER

Article XV D in the 1981-1983 collective negotiations agreement between the Eastampton Township Board of Education and the Eastampton Teachers Association is determined to be mandatorily negotiable. Articles VII C 1, and XIV A are determined to be not mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 18, 1983