

P.E.R.C. NO. 94-61

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY VOCATIONAL SCHOOLS
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-16

ESSEX COUNTY VOCATIONAL
TECHNICAL TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses without prejudice a scope of negotiations petition filed by the Essex County Vocational Schools Board of Education. The Board seeks a restraint of binding arbitration of a grievance filed by a teacher represented by the Essex County Vocational Technical Teachers' Association. The grievance asserts that the Board withheld the teacher's increments without just cause. Given a stay of arbitration until related proceedings are concluded, the Commission need not decide the scope of negotiations question now or perhaps ever.

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Appearances:

For the Petitioner, Schwartz Simon Edelstein Celso &
Kessler, attorneys (Joel G. Scharff, of counsel)

For the Respondent, Bucceri and Pincus, attorneys
(Louis P. Bucceri, of counsel)

DECISION AND ORDER

On August 23, 1993, the Essex County Vocational Schools Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by a teacher represented by the Essex County Vocational Technical Teachers' Association. The grievance asserts that the Board withheld the teacher's increments without just cause.

The parties have filed exhibits and briefs. These facts appear. The Association represents the Board's non-supervisory certified personnel. The parties entered into a collective negotiations agreement effective from July 1, 1991 until June 30,

1993. Article 5B prohibits discipline without just cause. The grievance procedure ends in binding arbitration of contractual disputes and disciplinary increment withholdings. See N.J.S.A. 34:13A-26 and 29.

Arnold Talbot is a tenured teacher. On March 22, 1993, the Board decided to certify tenure charges against Talbot accusing him of incapacity and unbecoming conduct. The Board concluded that these charges warranted dismissal or a reduction in salary. These charges are pending before the Commissioner of Education.

On the same day, the Board voted to withhold Talbot's employment and adjustment increments for the 1993-1994 school year. On April 5, 1993, Talbot grieved the increment withholding. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

The day after this petition was filed, the Association wrote the arbitrator a letter noting that tenure charges were pending before the Commissioner of Education and a criminal charge was pending in municipal court. The Association therefore requested that arbitration be stayed until the other proceedings were concluded. That request has apparently been granted.


The Board withheld Talbot's increment for disciplinary reasons. The parties agree on that point and that this dispute would normally be arbitrable. N.J.S.A. 34:13A-26. Accord Morris Hill Reg. Dist. Bd. of Ed., P.E.R.C. No. 92-69, 18 NJPER 59 (¶23025 1991).

The Board asserts that its filing of tenure charges divests the arbitrator of jurisdiction that he or she would otherwise have over this withholding. Given the stay of arbitration until all other proceedings are concluded, we need not decide that question now or perhaps ever. As the Board concedes, it may be that the other proceedings will moot the Association's demand for arbitration. Or it may be that those proceedings will change the issues to be litigated in a scope proceeding or in an arbitration. We will accordingly dismiss this petition without prejudice to its refiling if the Association seeks to continue binding arbitration after the other proceedings have been completed.

ORDER

The scope of negotiations petition filed by the Essex County Vocational Schools Board of Education is dismissed without prejudice.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993