

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF THE
CITY OF BRIDGETON,

Petitioner,

Docket No. SN-78-7

-and-

BRIDGETON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board of Education, the Commission rules on the negotiability of certain statements contained within the total performance evaluation of a tenured teaching staff member. The Association sought to arbitrate this matter, alleging violations of the collective negotiations agreement between the parties. The Commission determined that the subject matter in dispute, in accordance with prior Commission decisions, related to a permissive subject of collective negotiations and ruled that the dispute between the parties may proceed to arbitration if otherwise arbitrable under the terms of their collective negotiations agreement. The request by the Board for a permanent restraint of arbitration was therefore denied.

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Appearances:

For the Petitioner, Casarow, Casarow & Kienzle, Esqs.
(A. Paul Kienzle, of Counsel)

For the Respondent, Tomar, Parks, Seliger, Siminoff
and Adourian, Esqs.
(Mary Crangle, of Counsel)

DECISION AND ORDER

On September 22, 1977 the Board of Education of the City of Bridgeton (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 Bridgeton Education Association (the "Association") are within the scope of collective negotiations. The Petition for Scope of Negotiations Determination has attached to it a verified complaint and several additional attachments including excerpts from the collective negotiations agreement between the parties which covers the term July 1, 1976 through June 30, 1979 and a "Total Performance Evaluation" of Mr. Michael McHugh, who had filed a grievance

with the Board. It was the filing of the grievance which precipitated the filing of the instant petition. Additionally, the Board submitted a copy of an Order dated September 22, 1977 issued by Philip A. Gruccio, J.S.C. That Order directed the above-named parties to proceed immediately before the Commission and it further provided that the Court retained jurisdiction over any collateral issue or issues which the Commission might determine are not within its immediate jurisdiction.

In accordance with Judge Gruccio's Order, both parties appeared before the Chairman of the Commission on September 22, 1977 and presented arguments relating to a request by the Board for an interim restraint of arbitration pending our final determination. The Chairman of the Commission, after hearing the parties' arguments, concluded that the subject matter in dispute related to a permissive subject of negotiations. In a written decision the Chairman, in accordance with our decision in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976), denied the Board's request for interim relief.^{1/}

The facts and the particular subject matter in dispute between the parties are fully set forth in the Chairman's September 22, 1977 interlocutory decision and need not be repeated herein.

Following the Chairman's interlocutory ruling both parties submitted briefs setting forth their respective contentions. In its

^{1/} In re Board of Education of the City of Bridgeton, P.E.R.C. No. 78-14, 3 NJPER 327 (1977).

Statement of Facts, the Association notes that the arbitration hearing which the Board seeks to restrain was held on September 28, 1977, but that a determination had not yet been rendered. As we have not been advised by any party that the arbitrator has rendered a decision, it appears that there remains a matter in dispute which may appropriately be resolved by us.

The Board in its brief urges that we broaden our determination herein to consider more than just the "abstract issue" of the negotiability and therefore arbitrability of the issue in dispute, i.e. the statements contained in the total performance evaluation of a tenured teaching staff member. However, for the reasons stated in In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975) we do not believe we should undertake to decide questions of contractual arbitrability which we think are more appropriate for an arbitrator or the courts. Moreover it is apparent from the text of Judge Gruccio's Order that the courts are aware of the nature of our inquiry in a scope of negotiations dispute as Judge Gruccio retained jurisdiction over those aspects of the controversy which we determine are outside our jurisdiction.

We do not believe, as urged by the Board, that the Appellate Division's decision in In re Board of Ed., City of Englewood and Englewood Teacher's Association (Docket No. A-3018-75, 3/28/77, certif. den. ___ N.J. ___ (1977)) is relevant to the dispute herein. As noted by the Association, the Court in Englewood, relying on the

specific statutory authority contained in N.J.S.A. 18A:28-9, held a Board of Education's right to reduce personnel for reasons of economy could not be the subject of an arbitration proceeding. In the instant case we find there is no specific statutory mandate relating to the subject matter sought to be arbitrated. The Board's citation of N.J.S.A. 18A:27-3.1 et seq. is inapposite inasmuch as these provisions relate specifically to non-tenured teaching staff members. Since the grievant herein is a tenured teacher we need not decide whether these statutes would foreclose arbitration if the grievant were non-tenured.

We conclude that the subject matter in dispute is a permissive subject of negotiations, substantially for the reasons stated by the Chairman in his interlocutory decision, and the dispute between the parties may proceed to arbitration if otherwise arbitrable under the terms of their collectively negotiated agreement.^{2/} Therefore the request of the Board for a permanent restraint of arbitration must be and is hereby denied.

BY ORDER OF THE COMMISSION



 Jeffrey B. Tener
 Chairman

DATED: Trenton, New Jersey
 December 20, 1977
 ISSUED: December 21, 1977

Chairman Tener, Commissioners Forst, Hartnett & Parcels voted for this decision. Commissioner Hurwitz abstained & Commissioner Hipp was not present.

^{2/} While not cited by the Chairman in his interlocutory decision, we note that our decision in In re Teaneck Board of Education, P.E.R.C. No. 78-3, 3 NJPER 224 (1977), Appeal pending, App. Div. Docket No. A-5211-76, is in accord with our determination herein.