

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DELAWARE VALLEY REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION,

Petitioner,

Docket No. SN-79-42

-and-

DELAWARE VALLEY REGIONAL TEACHERS
ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission determines, as it has previously, that evaluation procedures are mandatorily negotiable. Relying on a recent Commission decision, In re Hazlet Township Board of Education, P.E.R.C. No. 79-62, 5 NJPER ____ (¶ ____ 1979), the Commission also held a just-cause provision to be arbitrable when applied as a measure of the reasonableness of the application of evaluation criteria that affects terms and conditions of employment. However, a reorganization and restructuring of departments and chairpersons is a non-negotiable managerial prerogative which could not be arbitrated under a contractual just cause provision. See In re East Orange Board of Education, P.E.R.C. No. 79-57, 5 NJPER ____ (¶ ____ 1979). Therefore, the request of the Board for a permanent restraint of arbitration was granted insofar as it related to just cause for termination of a department chairperson but denied insofar as it related to evaluation procedures.

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Appearances:

For the Petitioner, Wesley L. Lance, Esquire

For the Respondent, John A. Thornton, Jr., NJEA
UniServ Representative

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Delaware Valley Regional High School District Board of Education (the "Board") with the Public Employment Relations Commission on December 18, 1978 alleging that certain matters in dispute between the Board and the Delaware Valley Regional High School Teachers Association (the "Association") are not within the scope of collective negotiations

The dispute arose as a matter which the Association sought to process through the grievance/arbitration procedure contained within the parties' collective negotiations agreement.

On September 5, 1978, a grievance was filed by the Association on behalf of Richard Barnes alleging that Mr. Barnes had been improperly dismissed as department chairperson. When the

Association sought to bring this dispute to arbitration, the Board filed the within petition, which included a request that the arbitration be restrained pending final decision by the Commission. A conference relating to the Board's request was conducted by Stephen B. Hunter, Special Assistant to the Chairman, on January 9, 1979. At that meeting the Association agreed to clarify its demand for arbitration and submitted such clarification to the Board by letter on that same day.

On January 24, 1979, the Association submitted an amended demand for arbitration but the Board still did not agree to proceed to arbitration; however, on February 1, 1979 the Association agreed to a voluntary stay of arbitration pending the Commission's decision in this matter.

The relevant facts are not in dispute. On November 28, 1977, the Board established certain qualifications for department chairpersons relating to the possession of one of several types of administrative certificates. On November 28, 1977 and on August 7, 1978, the Board reorganized and restructured departments. Subsequent to the August 7, 1978 realignment and reorganization of departments, Richard Barnes was notified that he would not be reappointed Chairperson of the Social Studies Department for the school year 1978-1979. Mr. Barnes had been Chairperson of the Social Studies Department for the 1977-78 school year; however, he was not appointed Chairperson of the combined Social Studies/Art Department for the 1978-1979 school year.

In its brief filed on December 20, 1978 and supplemental

briefs submitted on December 28, 1978 and February 12, 1979, the Board argues that decisions relating to the reorganization and restructuring of departments, and the establishment of qualifications for chairpersons, are not mandatorily negotiable nor arbitrable, citing Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). The Board also points out that the individual grievant did not have tenure as a department chairperson.

The Association stated in its brief submitted on January 3, 1979 and clarification of position by letter submitted to the Board dated January 9, 1979 that it does not contest nor seek to arbitrate the right of the Board to reorganize and restructure departments or to establish qualifications for department chairpersons or the question of tenure of the grievant, but rather identified the grievance to be arbitrated as "The disparate and discriminatory treatment in violation of the evaluation procedure and just clause for termination."^{1/}

After careful consideration of the parties' submissions, we find that the gravamen of the dispute, as now framed by the Association, is the alleged violation of the contractual evaluation procedure and a claimed absence of just cause for termination as department chairperson.

Initially, we agree with the Board, and the Association accepts, that qualifications for department chairpersons are not

^{1/} Amended request for submission of a panel of arbitrators submitted to the Commission on January 24, 1979.

a term and condition of employment that is mandatorily negotiable.^{2/}
 On the other hand, the Commission, recognizing the
 distinction between evaluation criteria (non-mandatory)^{3/} and
 evaluation procedures, have held the latter to be mandatorily
 negotiable.^{4/}

Therefore, consistent with these decisions, we conclude
 that the Association may submit to arbitration the issue of the
 alleged violation of evaluation procedures if otherwise arbitrable
 under the parties' agreement.^{5/}

We turn now to the second aspect of this matter. The
 Commission has recently analyzed the arbitrability of contractual
 just cause provisions in two cases -- In re Hazlet Township Board
 of Education, P.E.R.C. No. 79-62, 5 NJPER ____ (¶ 1979) and
In re East Orange Board of Education, P.E.R.C. No. 79-57, 5 NJPER
 ____ (¶ 1979).

^{2/} See In re Salem Community College, P.E.R.C. No. 78-22, 3 NJPER
 375 (1977) and In re Plainfield Patrolmen's Benevolent Assn,
Local #19, P.E.R.C. No. 76-42, 2 NJPER 168 (1976).

^{3/} See Teaneck Bd of Ed v. Teaneck Teachers Assn, P.E.R.C. No. 78-3,
 3 NJPER 224 (1977), reversed 161 N.J. Super. 75 (App. Div. 1978);
Ridgefield Park, *supra*; In re New Milford Board of Education,
 P.E.R.C. No. 77-25, 2 NJPER 353 (1976); In re County College of
Morris, P.E.R.C. No. 77-64, 3 NJPER 165 (1977); and In re Board
of Trustees of Middlesex County College, 4 NJPER 47 (¶4023 1977).

^{4/} See In re Board of Education of the City of Englewood, P.E.R.C.
 No. 76-23, 2 NJPER 72 (1976); In re Wyckoff Board of Education,
 P.E.R.C. No. 77-41, 3 NJPER 79 (1977); In re West Orange Board
of Education, P.E.R.C. No. 78-19, 3 NJPER 238 (1977) and In re
Point Pleasant Beach Board of Education, 3 NJPER 74 (¶4036 1978).

^{5/} In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER
 55 (1975).

In Hazlet, we held a just cause provision to be arbitrable when used as a measure of the reasonableness of the application of evaluation criteria that affects terms and conditions of employment. In Hazlet, a group grievance was filed contesting notations made on year end evaluation forms concerning the work attendance of certain teachers. We found work attendance to be an evaluation criterion, and, therefore non-negotiable.

In East Orange, in distinguishing Hazlet, we held that the reorganization of duties among available personnel was a non-negotiable managerial prerogative, which action could not be arbitrated under a contractual just cause provision.^{6/} We noted that the management action being contested under a contractual just cause provision must be one which affects terms and conditions of employment, even if the actions are motivated by a desire to discipline the grievant.^{7/}

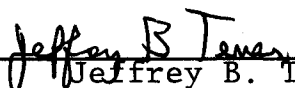
We find that the facts in the instant matter are analogous to East Orange wherein we did not allow the action contested under a just cause provision to proceed to arbitration. Similarly, here

^{6/} While reorganization of duties may affect terms and conditions of employment in some instances, the issue before the Commission in East Orange was the effect of the elimination of a single position through reorganization of duties among available personnel.

^{7/} The Appellate Division has held that in a case where it was alleged that a Board acted arbitrarily and capriciously in implementing a management decision (terminating non-tenured teachers) relief should be through administrative channels established by the Commissioner of Education, rather than the arbitration process. In re Board of Education of the City of Englewood, 150 N.J. Super. 265 (App. Div. 1977), cert. denied 75 N.J. 525 (1977). This reasoning would not apply to management conduct which discriminated against employees for the exercise of rights protected under our Act.

denied, this matter being arbitrable if otherwise arbitrable under the parties' agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves opposed. Commissioner Newbaker abstained. Commissioner Hipp was not present at the time of the vote.

DATED: Trenton, New Jersey
April 26, 1979
ISSUED: April 27, 1979