

P.E.R.C. NO. 78-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAPE MAY CITY BOARD OF EDUCATION,

Respondent,

Docket No. SN-78-33

-and-

CAPE MAY CITY EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Association, the Commission determines that the matter in dispute involving teacher evaluation criteria is a permissive subject for collective negotiations and the matter of teacher evaluation procedures is a mandatory subject. In accordance with the Commission's decision in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976), the Commission concludes that the grievance concerning this issue may proceed to arbitration if otherwise arbitrable under the terms of the parties' agreement. Accordingly, the Commission, in the first instance, would refuse to permanently restrain arbitration of this matter.

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Appearances:

For the Petitioner, Greenberg and Mellk, Esqs.
(Mr. Arnold M. Mellk, of Counsel)

For the Respondent, Pachman, Aron and Till, Esqs.
(Mr. Martin Pachman, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Cape May City Education Association (the "Association") on March 31, 1978 requesting a determination by the Public Employment Relations Commission as to whether criteria, procedures and the content of teacher evaluations is within the scope of collective negotiations.

The Association and the Cape May City Board of Education (the "Board") entered into a written agreement for the period July 1, 1976 to June 30, 1978. Article III of that agreement establishes a grievance procedure which culminates in binding arbitration. In addition to the contract, the Petition includes a separate document entitled "Teacher Evaluation Analysis". This document contains criteria and procedures for teacher evaluations and states that it is an agreement between the teachers, Board, and

the administration.

The present question originally arose out of a number of grievances filed by a tenured teacher, Mr. Charles McCarthy, who alleged that the Administrative Principal of the Cape May City Elementary School, Mr. John Demarest, was evaluating him more frequently than the other tenured teachers,^{1/} and that these evaluations contained adverse comments and observations outside the specific criteria contained in the "Teacher Evaluation Analysis" agreement.

The grievances having been denied by the Board on April 15, 1977, the Association demanded arbitration pursuant to Article III. In response to this demand, the Board, on October 7, 1977, obtained an Order from the Honorable Philip Gruccio, J.S.C., enjoining arbitration. This Order further provided that the Association file the instant Petition, the Court retaining jurisdiction to determine contractual arbitrability subsequent to the Commission's resolution of this scope of negotiations question.

The Board, in its letter in lieu of a formal brief, contends that since evaluation criteria and procedures are not contained in the parties' agreement, the instant dispute is not grievable or arbitrable under the definition of a grievance

^{1/} The "Teacher Evaluation Analysis" agreement provides that non-tenured teachers are to be evaluated at least three times a year. Mr. McCarthy, a tenured teacher, was evaluated four times between November 29, 1976 and April 1, 1977.

contained in Article III.^{2/} Further, the Board argues that under N.J.S.A. 34:13A-5.3, the Legislature intended that only mandatory subjects for collective negotiations -- i.e., terms and conditions of employment -- are subject to the contractual grievance procedure.

The Association, in its letter in lieu of a formal brief, does not speak to the question of whether the instant dispute is subject to the parties' grievance/arbitration procedure, but limits its argument to the contention that evaluation criteria and content,^{3/} being permissive subjects for negotiations, and evaluation procedures, being a mandatory subject, are all included in the "Teacher Evaluation Analysis" document agreed to by the Board and Association.

The Commission, in delineating the scope of negotiations, has made a distinction between the procedures and substantive criteria or qualifications utilized by public employers in hiring, promoting, evaluating and renewing public employees. Such procedures have been classified as mandatory subjects of negotiations while substantive criteria and qualifications are classified as permissive.^{4/} Accordingly, the grievances which prompted the filing of

^{2/} Article III defines a grievance as follows: "A grievance is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions affecting a teacher or a group of teachers, when not in violation of the law."

^{3/} The Commission considers evaluation content to be synonymous with evaluation criteria.

^{4/} In re Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976) (rev'd on other grounds, 150 N.J. Super. 265 (App. Div. 1976)); In re Plainfield Board of Education, P.E.R.C. No. 76-45, 2 NJPER 216 (1976); In re Wyckoff Board of
(Continued)

this petition, relating to required and permissive but not illegal subjects, can proceed to arbitration assuming they are otherwise arbitrable under the parties' agreement.^{5/}

The Board's contentions that the instant dispute is not arbitrable under the parties grievance/arbitration procedure is a question which the Commission will not consider in a scope of negotiations proceeding. Such proceedings address solely the abstract question of whether the subject matter in dispute is within the scope of collective negotiations. The question raised by the Board is appropriate for determination by an arbitrator and/or the Courts.^{6/} Accordingly, the Commission, in the first instance, would refuse to permanently restrain arbitration of this matter.

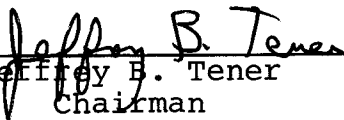
ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), the Commission hereby determines that the matter in dispute involves both mandatorily negotiable teacher evaluation procedures and permissively negotiable

4/ (Continued) Education, P.E.R.C. No. 77-41, 3 NJPER 79 (1977); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (App. Div. 1977); In re City of Plainfield, P.E.R.C. No. 76-42, 2 NJPER 168 (1976); In re West Orange Board of Education, P.E.R.C. No. 78-19, 3 NJPER 328 (1977); In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER (1977), reaffirmed 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; In re Weehawken Board of Education, P.E.R.C. No. 78-57, 4 NJPER 157 (Para. 4074 1978) and In re Board of Education City of City of Bridgeton, P.E.R.C. No. 78-34, 3 NJPER 327, (1977); Clifton Board of Education v. Clifton Teachers Assn, 154 N.J. Super. 500

teacher evaluation criteria. Consequently, this grievance may be submitted to arbitration if it is otherwise arbitrable under the terms of the parties' collective negotiations agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels voted for this decision. None opposed. Commissioner Schwartz abstained. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978