

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-79-23

TEACHERS' ASSOCIATION OF MORRIS,

Respondent.

SYNOPSIS

The Commission in a scope of negotiations proceeding determines that the matter in dispute, workload of kindergarten through third grade teachers, is a required subject for collective negotiations and that the grievance relating thereto is arbitrable if otherwise arbitrable under the parties' agreement. The Board of Education's request for a permanent restraint of arbitration was hereby denied. The Commission, for the reasons expressed in its decision, declined to rule on the aspect of the Board's scope petition that asked that the arbitrator's potential remedy be restrained. The Commission concluded that that issue does not relate to the scope of collective negotiations.

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Appearances:

For the Petitioner, Wiley, Malehorn & Sirota, Esqs.
(Mr. Frederic J. Sirota, of Counsel)

For the Respondent, Goldberg & Simon, Esqs.
(Mr. Gerald M. Goldberg, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-79-23, was filed with the Public Employment Relations Commission on October 30, 1978 by the Morris School District Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the Board and the Teachers' Association of Morris (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Board in its initial submissions stated that the Association had grieved and was seeking to arbitrate the Board's decision to require teachers in grades one, two and three to conduct compensatory education programs during their regular

instructional period.^{1/} The Board also requested a temporary restraint of arbitration. The Board filed a brief simultaneously with its petition and request for restraint. The Association filed a brief on December 4, 1978, and a supplement to this brief was filed on December 27, 1978.

The arbitration that had been scheduled was temporarily adjourned and the parties met with Stephen B. Hunter, Special Assistant to the Chairman, on January 18, 1979 to consider all aspects of this matter, at which time a schedule for filing supplemental briefs was established.

The Board submitted a supplemental memorandum of law on January 24, 1979 and the Association submitted a supplemental brief on January 29, 1979. The Board and the Association submitted letters in reply to each other's supplemental submissions, which were received by February 13, 1979.^{2/}

The relevant facts are basically uncontroverted. In September 1977, the Board instituted a compensatory education program. The Board required teachers in grades one, two and three (see n.1 above) to conduct compensatory education programs during their regular instructional periods. Special compensatory education teachers were assigned to teach the program in grades four and above.

^{1/} While the Board's petition states that teachers in grades one through three were required to teach the compensatory education program as of September 1977, the Association's request for arbitration refers to kindergarten through third grade. Later submissions from the Board indicate that the dispute does involve kindergarten through third grade.

^{2/} The Board requested oral argument when it filed this petition. However, it has now dropped that request.

A grievance was filed on behalf of lower level primary grade teachers by the Association. The grievance alleged that the additional duties represented an increase in workload which violated the parties' agreement, including but not limited to the section on "Teachers Rights and Protection in Representation" which incorporates the provisions of N.J.S.A. 34:13A-1 et seq. as well as violating past practices. The grievance was denied at the various administration levels on the grounds that the decision was one of major educational policy.

A demand for arbitration was made by the Association on June 7, 1978 and amended on November 10, 1978. The amended demand set out the nature of the dispute as:

Additional workload imposed upon K-3 grade teachers in violation of the contract and past practice. 3/

The following remedy was sought:

1. Additional compensation and/or release time to compensate for the increased workload
• imposed upon K-3 grade teachers retroactively to September 1977.
2. Return workload and all terms and conditions of employment of K-3 grade teachers to the level in effect prior to September 1977.
3. Such other and further relief as the arbitrator may deem appropriate.

The Board requests the Commission to restrain arbitration to the extent that any remedy the arbitrator may issue would infringe

3/ The Association specifically conceded that it was not challenging the Board's decision to require certain teachers to conduct compensatory education programs during their regular instructional periods. The Association maintained that its amended demand for arbitration exclusively related to workload considerations, a required subject for collective negotiations.

on a matter of major educational policy or management prerogatives. The Board cites Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) in support of its position.

The Association argues that the Commission should not pass upon the potential remedy that an arbitrator might render in the event a contractual violation is found. It points out that the Commission's role in scope of negotiations decisions is limited to determining whether particular matters in dispute are within the scope of collective negotiations and may proceed therefore to arbitration. It further points out that in In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975) the Commission refused to rule on contract arbitrability or to examine the merits of the grievance or any other question that should appropriately be determined by the arbitrator or the courts. The Association also cites In re Wyckoff Board of Education, P.E.R.C. No. 77-41, 3 NJPER 79 (1977), in which the Commission refused to pass on the propriety of a possible remedy to be determined by an arbitrator.

After careful consideration of the parties' submissions in this matter, the Commission concludes that the issue of alleged additional workload to be imposed on the kindergarten through third grade teachers concerns a mandatorily negotiable term and condition of employment which may be submitted to arbitration pursuant to the procedures contained in the parties' contract if otherwise arbitrable under the parties' agreement. See In re

Rahway Board of Education, P.E.R.C. No. 79-30, 5 NJPER ____
(¶ ____ 1978).

Having made this determination regarding the negotiability of the issue in dispute, we will discuss another issue raised by the Board. It appears that the Board essentially recognizes the negotiability of workload but seeks nevertheless to have the arbitration restrained because of the extent of the remedy requested by the Association.

At least at this time, prior to the issuance of an arbitration award, it is not within the Commission's authority to pass upon an arbitrator's remedial orders. See In re Wyckoff Board of Education, supra. We need not reach the question as to whether we may have a role via N.J.S.A. 34:13A-5.4(d) in subsequent disputes regarding the validity of an award. We do note that N.J.S.A. 2A:24-7 provides that the courts should confirm, vacate or modify an arbitration award upon commencement of a summary action. N.J.S.A. 2A:24-8(d) explicitly empowers the judiciary to vacate an award where an arbitrator has exceeded his or her powers.

The Commission declared in Hillside, supra,^{4/} that once having determined whether an issue in dispute is within the scope of collective negotiations, we will not rule on contract arbitrability, the merits of the grievance, defenses to the grievance, whether there is a valid arbitration clause, or other questions that appropriately belong before the arbitrator. The issue of

^{4/} It should be noted that Hillside, supra, was cited with approval by the Supreme Court in Ridgefield Park, supra.

remedy appropriately belongs before the arbitrator. Therefore, the Commission declines to rule on the aspect of the Board's scope petition that asks that the arbitrator's potential remedy be restrained. That issue does not relate to the scope of negotiations.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the matter in dispute, workload of kindergarten through third grade teachers, is a required subject for collective negotiations and that the grievance relating thereto is arbitrable if otherwise arbitrable under the parties' agreement. The Board of Education's request for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Graves voted for this decision. None opposed. Commissioners Newbaker and Hipp abstained.

DATED: Trenton, New Jersey
March 8, 1979
ISSUED: March 9, 1979