

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TEANECK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-77-36

TEANECK TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Board of Education, the Commission ruled on the negotiability of a issue relating to the criteria used in the teacher evaluation process and any judgments and decisions of the evaluators made pursuant to that process. The Board of Education had sought to restrain arbitration on the ground that the substance of the instant grievances concerned managerial prerogatives relating to assessments of the quality of teacher performance which were outside the scope of collective negotiations and therefore non-arbitrable. The Association submitted that the matters at issue in the grievances that were filed at the least referred to permissive subjects of collective negotiations and were thus arbitrable in accord with the doctrine first enunciated by the Commission in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976).

The Commission concluded that the subject matter of the grievances at issue related to a basic educational policy decision concerning the manner and means of providing educational services to students and thus was not subject to mandatory negotiations. The Commission however concluded that in the absence of any specific statutory proscriptions nothing would preclude the parties from negotiating about the issue of evaluation criteria and content, i.e., it was a permissive subject of negotiations. The Commission therefore ruled that a grievance with respect thereto may be submitted to arbitration if otherwise arbitrable under the parties' collective negotiations agreement.

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Appearances:

For the Teaneck Board of Education, Gerald L. Dorf, P.A.
(Mr. Richard M. Salsberg, on the brief)

For the Teaneck Teachers Association, Goldberg, Simon &
Selikoff (Mr. Theodore M. Simon, of counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-77-36, was filed with the Public Employment Relations Commission (the "Commission") on May 11, 1977, by the Teaneck Board of Education (the "Board") seeking a determination as to whether certain disputed matters which the Teaneck Teachers Association (the "Association") sought to submit to arbitration were within the scope of collective negotiations.^{1/} The instant Petition also

^{1/} The Commission's authority to determine whether a matter in dispute is within the scope of collective negotiations appears at N.J.S.A. 34:13A-5.4(d): "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

requested that the Commission grant interim relief in the form of an order restraining arbitration proceedings concerning the issues in dispute. In correspondence dated May 13, 1977, the Association voluntarily agreed to refrain from pursuing these particular matters to arbitration pending the Commission's determination of the within disputed issues.

The factual context in which the instant dispute arose is not complicated and is undisputed by the parties. In December 1976 and January 1977, certain teachers employed by the Board and represented by the Association were given mid-year evaluations by their respective school administrators, pursuant to Article VII entitled Teacher Observation and Evaluation of the contractual agreement between the Board and the Association covering the period between September 1, 1976 and August 31, 1978. On January 31, 1977, the Association filed two grievances with the Board claiming that the Board had violated the evaluation procedures as set forth in Article VII of the contract. The Association contended that by placing in certain teachers' files negative comments relating to their non-participation in allegedly voluntary after-school activities, i.e. Back to School Night and extracurricular activities, particular administrators had relied upon factors that were not contractually includable in evaluation reports.^{2/} Subsequently, the Board denied the respective grievances. On March 31, 1977,

^{2/} Article VII of the contract reads, in part, at subsection (a) (1) that "such on-the-job evaluations shall include only school related activities and responsibilities."

the Association filed a request for a panel of arbitrators with the Commission, although the Board contended that the matters at issue were not grievable. The Board filed the instant Petition shortly after the Commission, through its Director of Impasse Procedures, appointed an arbitrator in this dispute.

The Board in its Petition and in its brief indicated that the issue herein was whether or not the substance of the evaluations that was the subject of the grievances, that is, the subjective determinations of particular school administrators made under the evaluation procedures set forth in Article VII of the contract, as to their opinions of the grievants' performance pursuant to certain criteria, related to matters within the scope of negotiations that could be submitted to arbitration. The Board submitted that its right, through its agents and representatives, to pass upon the quality of teacher performance was a managerial prerogative that was clearly beyond the scope of negotiations. The Board placed considerable reliance on certain broad grants of authority allocated to local boards of education relating to the governing and management of school districts, as set forth in N.J.S.A. 18A:11-1, in support of its position that the substance of the instant grievances concerned managerial prerogatives outside the scope of collective negotiations. The Board referred to Commission and judicial precedent that, it contended, established that only evaluation procedures, narrowly defined, and not evaluation content was within the scope of required negotiations.

The Association's position herein set forth in its brief reveals that the instant parties perhaps misunderstood each other's basic positions. The Association did not challenge the veracity of the contents of the opinions placed in the teacher evaluations that were the subject of the grievances, but only disputed whether the Board could, pursuant to Article VII, include such subject matter in these evaluations. The Association submitted that the issues of evaluation standards, policies and procedures were required subjects of collective negotiations, in accord with Commission and other judicial precedent. The Association concluded that the effect of the evaluation process on the terms and conditions of a teacher's employment cannot be seriously questioned since these evaluations are normally the most important factor considered in decisions concerning transfers, reassignments, tenure, promotion, and the granting or denying of wage increments. The Association maintained that, even if the Commission agreed with the Board's assessment of the nature of the instant dispute and therefore determined that the issue in this Scope Petition did concern whether the opinions or judgments of an evaluator may be submitted to an arbitrator, the Commission should find that this issue was at least permissibly negotiable and thus arbitrable in accord with the doctrine first enunciated by the Commission in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976).

After careful consideration of the parties' submissions, the Commission concludes that the substance of the grievances at

issue deals primarily with the criteria to be utilized by school administrators in determining whether teachers within the district are performing at levels deemed necessary by the Board of fulfill the educational mission of the school system for the purpose of according tenure, granting salary increments and the evaluation of staff development. The Commission does not conclude that the matters at issue in this Scope Petition concern evaluation procedures, as the Commission has defined that term, but instead relate to evaluation content and criteria as asserted by the Board.^{3/}

The Commission therefore concludes that the subject matter of the grievances at issue in the Board's Scope Petition relates to a basic educational policy decision that concerns the manner and

^{3/} The Commission in several decisions has determined that procedures regarding teacher evaluations are required subjects of negotiations, but has distinguished evaluation procedures from substantive evaluations which have been deemed to be managerial prerogatives and permissive rather than mandatory subjects of negotiations. Evaluation procedures have been categorized as relating to how the actual evaluation process should be conducted, who shall be evaluated, the format of these evaluations, and the identification of the evaluator. The Commission has found that these particular matters go to the reasonable expectation of teachers to know what is expected of them to be able to attain job security, to have adequate notice of the deficiencies which may threaten that security, and the right to have input into procedures such as the timing and manner of observations which might impair that job security. See e.g. In re Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976), reversed on other grounds, App. Div. Docket No. A-3018-75 (1977); In re Plainfield Board of Education, P.E.R.C. No. 76-45, 2 NJPER 216 (1976) (appeal dismissed by stipulation), Docket No. A-4378-75; In re Wyckoff Board of Education, P.E.R.C. No. 77-41, 3 NJPER _____ (1977); In re County College of Morris, P.E.R.C. No. 77-64, 3 NJPER _____ (1977), appeal pending; and In re Ridgfield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER _____ (1977).

the means of providing educational services to students and thus is not subject to mandatory negotiations. The Commission concludes, however, that in the absence of any specific statutory proscription, nothing would preclude the parties from negotiating about the issue of evaluation criteria and content, i.e., it is a permissive subject of negotiations.^{4/} We therefore conclude that a grievance with respect thereto may be submitted to arbitration if otherwise arbitrable under the parties' collective negotiations agreement.^{5/}

^{4/} As stated before, the Board placed considerable reliance on certain broad grants of authority invested in local school boards to manage their school systems in support of its contentions in this matter. The Commission in several recent decisions has determined that the statutory amendments to N.J.S.A. 34:13A-8.1, as set forth in Chapter 123, Public Laws of 1974, established that general statutes giving authority to employers are not to be read as shields to the employer's obligation to negotiate regarding terms and conditions of employment, but specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations. In re State of New Jersey (Local 195), P.E.R.C. No. 77-57, 3 NJPER ____ (1977), appeal pending Docket No. A-3809-76; In re State of New Jersey (State Supervisory Employees Association), P.E.R.C. No. 77-67, 3 NJPER ____ (1977); and In re Ridgefield Park Board of Education, supra.

The Commission therefore concludes, reading N.J.S.A. 18A:11-1 in pari materia with the New Jersey Employer-Employee Relations Act, that nothing within N.J.S.A. 18A:11-1 in and of itself prohibits negotiations between a board of education and the exclusive representative of its professional staff concerning the issue of the criteria used for the evaluation of professional staff.

^{5/} As analyzed fully in In re Bridgewater-Raritan Regional Board of Education, supra, the Commission has determined that either a required or permissive subject of negotiations is arbitrable if the dispute arose under a contract entered into after the effective date of Chapter 123 of the Public Laws of 1974 [January 20, 1975]. In the instant matter it is uncontroverted that the contractual agreement at issue was entered into after the effective date of Chapter 123.

It should be noted at this time that the Commission is merely addressing the abstract issue concerning whether the matter in dispute is within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievants, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.^{6/}

ORDER

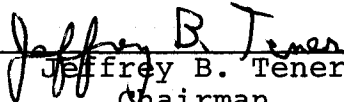
Pursuant to N.J.S.A. 34:13A-5.4(d) and N.J.A.C. 19:13-3.7 and the above discussion, the Public Employment Relations Commission determines that the issue relating to the criteria used in the evaluation process and any judgments and decisions which are made pursuant to said evaluation relates to a permissive subject of negotiations and a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the terms of the parties' current collective negotiations agreement.

The request of the Teaneck Board of Education for an order

^{6/} In re Hillside Board of Education, P.E.R.C. No. 76-11 at p. 9, 1 NJPER 55, 57 (1975).

permanently restraining arbitration of this matter is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

DATED: Trenton, New Jersey
July 13, 1977
ISSUED: July 14, 1977